

March 12, 2004

**TO:** Commissioners and Alternates  
**FROM:** Will Travis, Executive Director (415/352-3653 [travis@bcdc.ca.gov](mailto:travis@bcdc.ca.gov))  
Leslie Lacko, Coastal Program Analyst (415/352-3616 [lesliel@bcdc.ca.gov](mailto:lesliel@bcdc.ca.gov))  
**SUBJECT:** **Staff Recommendation on Permit Application No. 1-02, from Waldo Point Harbor for a 20-year Reauthorization of the Waldo Point Harbor Houseboat Marina and Authorization for Additions to the Marina Located between Gate 6 Road and Gate 5 Road, in an Unincorporated Area of Marin County**  
(For Commission consideration on March 18, 2004)

### Summary and Recommendations

The staff recommends that the Commission approve BCDC Permit Application No. 1-02 which, as conditioned, would authorize for 20 years, maintenance of the portions of Waldo Point Harbor houseboat marina that were authorized under a former, expired Commission permit and would further authorize additions to Waldo Point Harbor, located between Gate 6 Road and Gate 5 Road, near the City of Sausalito, in an unincorporated area of Marin County.

Special Conditions have been included in the recommendation to ensure that the 274,827 square feet of old Bay fill and the 31,081 square feet of new Bay fill are the minimum fill necessary, minimize harmful effects to the Bay area, such as, the reduction of volume, surface area, and water quality, are consistent with the Public Trust pursuant Section 66605 of the McAteer-Petris Act and are consistent with the *San Francisco Bay Plan* policies on houseboats, mitigation and the *Richardson Bay Special Area Plan*.

Special Conditions have also been included to ensure that the approximately 83,602 square feet of public access and improvements would be improved, maintained, and guaranteed for the life of the project, consistent with Section 66602 of the McAteer-Petris Act and the *San Francisco Bay Plan* policies on public access.



### Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

#### I. Authorization

- A. Subject to the conditions stated below, the permittee, Waldo Point Harbor, LLC., is granted permission to use, maintain, and construct an addition to the Waldo Point Harbor houseboat marina, located near the City of Sausalito, between Gate 5 Road and Gate 6 Road, in an unincorporated area of Marin County. Authorized work includes the following:

##### **In the Bay:**

1. Use and maintain five docks totaling approximately 25,280 square feet of pile-supported fill and approximately 249,547 square feet of fill for up to 232 houseboats (excluding Gates houseboats, arks, and ark-replacements) located on "A" Dock, Issaquah ("B") Dock, Main ("C") Dock, Liberty ("D") Dock, and South Forty ("E") Dock;
2. Construct, use and maintain, between the proposed park and Main Dock, a 2,160-square-foot, floating dock with 24 berths and 1,500 square feet of floating fill for associated ramps and floats;
3. Construct, use and maintain, at the foot of Issaquah Dock, a 520-square-foot, floating dock with 4 berths and 400 square feet of floating fill for associated ramps and floats;
4. Construct, use, and maintain an 825-square-foot, pile-supported extension to Main Dock to create 4 new berths;
5. Improve, use, and maintain approximately 19,286 square feet of fill for 38 houseboats (Gates houseboats) berthed in the following locations: (a) 24 houseboats on the Gates Dock; (b) 4 houseboats on the floating dock south of Issaquah Dock; (c) 4 houseboats on Main Dock; (d) 4 houseboats on A Dock; and (e) 2 houseboats between South Forty and Liberty Dock;
6. Moor, use and maintain 2,500 square feet of floating fill for 3 houseboats to replace arks that burned or were torn down after 1971;
7. Use and maintain approximately 21,547 square feet of pile-supported fill for 9 arks;
8. Construct, use and maintain a 910-square-foot, pile-supported pier for use as a construction platform and then as public access extending from the shoreline park;
9. Construct, use and maintain, at the belvedere between Liberty and South Forty Docks, a 530-square-foot, pile-supported pier with an observation deck for public access and one berth;
10. Construct, use and maintain, at the foot of "A" Dock, 150 square feet of floating ramps for 4 proposed berths;
11. Remove 1,035 square feet of unauthorized fill from the Appleton Ark (Ark #3) leaving a 3,814-square-foot structure (included in the total square footage for arks in "h" above);
12. Use and maintain 40,717 square feet of solid fill to improve shoreline appearance and provide public access;
13. Create a usable public shoreline and park by installing a quay wall from the west side of the Appleton Ark to the existing quay wall south of Dock B;

14. Install, use and maintain approximately 7,199 square feet (112.5 cubic yards) of solid fill behind the new quay wall to raise the new public shoreline to 7 feet above Mean Sea Level;
15. Remove all abandoned and unusable fill within the harbor including the old Gates Dock, utilities, any houseboats failing to satisfy County codes, and sunken debris;
16. Moor, use and maintain during construction of the project, an approximately 7,000-square-foot, floating harbor maintenance area, including an approximately 3,500-square-foot barge, an approximately 700-square-foot pile driver, and an approximately 2,800-square-foot floating equipment area on A Dock; and
17. After completing project construction, reduce the harbor maintenance area to a total of approximately 3,150 square feet, which may include a barge, pile driver, and floating equipment area for equipment that is needed for harbor maintenance.

**Within the 100-foot shoreline band:**

1. Construct improvements to and maintain, and use 22,810 square feet of 8 to 10-foot-wide paths throughout the entire harbor for public access;
  2. Place fill to raise an approximately 111,000-square-foot area to 7 feet above Mean Sea Level for use as a public park and parking lot and grade, use and maintain this area;
  3. Construct, use, and maintain approximately 33,395 square feet of public park between Issaquah Dock and the Gates Dock including: (1) approximately 3,037 square feet of 8 to 10-foot-wide, paved shoreline path that connects to the existing path below Issaquah Dock and to the path near Main Dock; (2) 4,092 square feet of informal, all-weather paths; (3) 26,266 square feet of landscaping; (4) views to the park from Bridgeway; and (5) benches, trash receptacles, bollards and railings;
  4. Construct, use and maintain an approximately 4,180-square-foot, paved parking lot including 10 public parking spaces;
  5. Construct, use and maintain a private parking lot with 106 parking spaces;
  6. Relocate trash bins for each dock to the upland side of the shoreline path;
  7. Remodel, use and maintain the Harbor Master's Office to include updated offices and a new harbor maintenance area in the basement; and
  8. Install, use and maintain 23,217 square feet of landscaping throughout the harbor (excluding the park).
- B. This authority is generally pursuant to and limited by the permittee's application received May 16, 2002, including all accompanying and subsequent exhibits and correspondence, but subject to the modifications required by the conditions herein.
- C. The work authorized by this permit must commence by July 30, 2005, and must be diligently pursued to completion and must be completed by May 30, 2008, unless the terms of this authorization are changed by amendment of this permit.
- D. The project will require approximately 274,827 square feet (6.4 acres) of old fill for docks and residential structures and 29,431 square feet of new fill, including: (1) approximately 19,286 square feet of floating fill for 38 Gates houseboats; (2) 1,440 square feet of pile-supported fill for two public piers; (3) 825 square feet of pile-supported fill to extend Main Dock to accommodate four Gates houseboats; (4) 2,160 square feet of floating fill for the Gates Dock, which will accommodate 24 houseboats; (5) approximately 3,150 square feet of floating fill for a harbor maintenance area; and (6) 3,660 square feet of floating fill for various docks ramps and floats. The total amount of old and new fill will be approximately 372,829 square feet (8.6 acres). The project also provides 83,602 square feet of public access park, paths, landscaping, and amenities, including the following elements:

(1) an approximately 33,395-square-foot park-like public access and open space area with a paved shoreline path, a public pier, landscaping, and informal paths; (2) 22,810 square feet of 8 to 10-foot-wide, shoreline paths outside of the “park”; (3) 23,217 square feet of landscaping outside of the “park”; and (4) 4,180 square feet for a paved parking area with 10 public parking spaces.

## II. Special Conditions

The authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

### A. Specific Plans and Plan Review

1. **Plan Review.** No work whatsoever, except in-kind dock maintenance, shall be commenced pursuant to this authorization until final precise site, engineering, berthing, grading, architectural, and landscaping plans and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The specific drawings and information required will be determined by the staff. To save time, preliminary drawings should be submitted and approved prior to final drawings.
  - a. **Site, Architectural, and Landscaping Plans.** Site, architectural, and landscaping plans shall include and clearly label the Mean High Tide Line, the line 100 feet inland of the Mean High Tide Line, property lines, the boundaries of all areas to be reserved for public access purposes and open space, grading, details showing the location, types, dimensions, and materials to be used for all structures, irrigation, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities and other proposed improvements. In addition to the information listed above, provide the following information:
    - (1) The site plan shall provide a dimension line which marks the minimum distance between a proposed structure or parking authorized by this permit and the Mean High Water Line (National Geodetic Vertical Datum). Additional dimension lines shall be provided, as necessary, to locate where this minimum dimension occurs in relation to either the property line, the top of bank, or some other fixed point upon the site.
    - (2) The landscaping plans shall show the public access details. The plans shall provide a dimension line which marks the distance from the corner of Bridge-way Boulevard and Gate 6 Road to the beginning of the public access pier at the edge of the park delineated by the quay wall. The dimension line shall also indicate the distance between the eastern edge of the parking lot authorized by this permit and the beginning of the public access pier at the quay wall. Additional dimension lines shall be provided, as necessary, indicating path widths, landscaped corridors, and other public access details.
  - b. **Engineering Plans.** Engineering plans shall include a complete set of contract drawings and specifications and design criteria for all new pile-supported structures and shoreline protection work. The design criteria shall be appropriate to the nature of the project, the use of any structures, soil and foundation conditions at the site, and potential earthquake-induced forces. Final plans shall be signed by the professionals of record and be accompanied by:
    - (1) Evidence that the design complies with all applicable codes; and
    - (2) Evidence that a thorough and independent review of the design details, calculations, and construction drawings has been made.

- c. **Plan Submittal.** Plans submitted shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. Approval or disapproval shall be based upon:

- (1) completeness and accuracy of the plans in showing the features required above, particularly the Mean High Tide Line, property lines, and the line 100-feet inland of the Mean High Tide Line, and any other criteria required by this authorization;
- (2) consistency of the plans with the terms and conditions of this authorization;
- (3) the provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this authorization;
- (4) consistency with legal instruments reserving public access and open space areas;
- (5) assuring that any fill in the Bay does not exceed this authorization and will consist of appropriate shoreline protection materials as determined by or on behalf of the Commission;
- (6) consistency of the plans with the recommendations of the Design Review Board;
- (7) assuring that appropriate provisions have been incorporated for safety in case of seismic event.

Plan review shall be completed by or on behalf of the Commission within 45 days after receipt of the plans to be reviewed.

2. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, landscaping, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission.
3. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the Special Condition or the legal instrument shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.
4. **Plan Review for Houseboat Expansions.** For the purpose of ensuring that individual houseboats do not exceed the minimum setbacks required by the County of Marin, do not extend into view corridors and open-water areas, and do not exceed two stories above the water line, no work whatsoever shall be commenced on any individual houseboat project involving expansion of the height or square footage of the houseboat until final precise plans have been reviewed and approved by or on behalf of the Commission. Such expansion plans shall include the following: (1) a dock plan depicting the berth location; (2) an existing structure plan and overall site plan showing Waldo Point Harbor and State Lands Commission property lines; (3) architectural plans with floor plans depicting the expansion and elevations of the structure; (4) any plans for personal floats, docks or other exterior areas for private use; and (5) any other relevant criteria, specifications, and plan information. The specific drawings and information required will be determined by the staff. To save time, preliminary drawings should be submitted and approved prior to final drawings.

## B. Construction Layout Inspection

1. **Written Request.** Prior to constructing any forms for any structure or parking lots that will be located in or adjacent to BCDC's 100-foot-wide shoreline band or required public access or open space areas, the permittee shall request in writing an inspection by the Commission staff of the construction layout as it has been surveyed and staked in the field relative to the Mean High Tide Line.
  2. **Certificate of Foundation Layout Inspection.** Within five working days of receipt of the written request for an inspection, the Commission's staff will inspect the construction layout as it has been surveyed and staked in the field for any structure or parking lots that will be located in or adjacent to BCDC's 100-foot-wide shoreline band or required public access or open space area. The permittee shall not commence construction of the forms or pour concrete until the staff has confirmed in writing that the foundation layout is consistent with the terms and conditions of the permit by providing the permittee with a Certificate of Foundation Layout Inspection.
  3. **Responsibility of Permittee.** If the staff is unable to perform this inspection within the 5-day period, the permittee may commence such work, but the staff's inability to complete such an inspection does not relieve the permittee of the responsibility to provide public access areas and build the project in accord with the approved plans.
- C. **Construction.** The final plans submitted pursuant to this condition shall generally conform to the plans entitled "BCDC Application Plan, Waldo Point Harbor Master Plan and Development Plan 2001 Mitigated Plan," sheets 3,4,7,8 and 14 through 21; prepared by Civil Engineers ILS Associates, Inc., Marine Engineers Vollmer Construction Consultancy, and Landscape Architect Elizabeth A. Clark, as revised through October 16, 2003.
- D. **Design Review Board Review.** Final draft landscaping plans showing the public access details shall be reviewed by the Design Review Board prior to submittal to the staff for final approval pursuant to Special Condition II-A. The specific drawings required shall be determined by the staff's Bay Design Analyst. Such materials shall demonstrate to the satisfaction of the Board that the permittee has adopted a public access design that is consistent with the terms of this authorization and is generally consistent with the objectives previously stated by the Design Review Board and the staff, or is otherwise found by the Board to provide equal or better public access than that previously reviewed.

## E. Public Access

1. **Area.** The approximately 83,602-square-foot area, along approximately 2,408 feet of shoreline as generally shown on Exhibits "A" and "B" shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, picnicking, and related purposes. Subject to future review by the Design Review Board, the general shape of the public access areas shown in Exhibit "A" may undergo minor modifications if approved by or on behalf of the Commission in a manner consistent with the Design Review Board's recommendations and in a manner generally consistent with this authorization. If the permittee wishes to use the public access area for other than public access purposes, it must obtain prior written approval by or on behalf of the Commission.

The overall proposal for public access for this project includes:

New public access:  
33,395 square feet

New public access parking in the shoreline band:  
4,180 square feet for a parking area with  
10 parking spaces

Existing public access to be retained and improved:  
46,027 square feet

2. **Public Access Guarantee.** Prior to the commencement of any grading or construction activity and after final review by the Design Review Board, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise guarantee for the life of the project such rights for the public to the approximately 83,602-square-foot public access areas(s). The instrument(s) shall create rights in favor of the public which shall commence no later than after completion of construction of any public access improvements required by this authorization and prior to the use of any structures authorized herein, and shall continue for so long as any portion of the project remains. Such instrument shall be in a form that meets recordation requirements of Marin County and shall include a legal description of the property being restricted and a map that clearly shows and labels the Mean High Tide Line, property lines, the property being restricted for public access, the legal description of the property and of the area(s) being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following:
  - (a) Sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this authorization;
  - (b) Inclusion of an exhibit or exhibits to the instrument that clearly shows the area(s) to be reserved with a legally sufficient description of the boundaries of such area(s) as required above; and
  - (c) Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users.
3. **Recordation of the Public Access Instrument.** Within 30 days after approval of the instrument, the permittee shall record the instrument on all parcels affected by the permit and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission.
4. **Improvements Within the Total Public Access Area.** Prior to the use of the Gates Dock authorized herein, the permittee shall install the following improvements, as generally shown on attached Exhibits A and B:
  - (a) An approximately 33,395-square-foot “park” including the following:
    - i. A 8-to-10-foot-wide shoreline path (described in E.4(b)(iii) below);
    - ii. A series of 6-to-8-foot-wide, informal paths that connect the park to parking lots and connect the park to Bridgeway Boulevard;
    - iii. Irrigated landscaping throughout the park that extends to the corner of Bridgeway Boulevard and Gate 6 Road, and includes a landscaped screen between the park and the Appleton Ark;
    - iv. Approximately 10 benches and 3 trash receptacles;
    - v. Bicycle racks located in a secure area; and
    - vi. Subject to future review by the Design Review Board:
      - A shoreline path between Issaquah Dock and the park that includes a buffer between the path and the adjacent parking lot drive aisle;

- A strong physical connection from Bridgeway Boulevard to the Bay that includes the parking lot drive aisles and that may include reconfiguring some parking to create an acceptable park design; and
  - Lighting throughout all public areas.
- (b) Approximately 30,221 square feet of 8 to 10-foot-wide, shoreline paths throughout the harbor, including:
- i. An 8-foot-wide, paved path that extends along the shoreline from South Forty Dock to the northwest end of the parking lot near Main Dock;
  - ii. An 8 to 10-foot-wide, paved path that connects to the path at the northwest end of the parking lot near Main Dock and extends along the shoreline of “Ark Row,” to the south end of the park;
  - iii. An 8 to 10-foot-wide, paved path that connects to the path along “Ark Row” and extends around the landscape screen of the Appleton Ark and along the shoreline to the northern edge of the park;
  - iv. An 8-foot-wide, paved path that connects to the shoreline path in the park and extends along the shoreline from the north edge of the park to the north end of the property where it connects to the shoreline path at Yellow Ferry Harbor;
  - vii. An 8-foot-wide, striped path that connects the shoreline path at the south end of the park, across the parking lot to Bridgeway Boulevard; and
  - viii. Subject to future review by the Design Review Board, a bike lane connecting Gate 5 Road through the parking lot to the shoreline path north of Main Dock; and
- (c) An approximately 4,180-square-foot public access parking area with 10 public access parking spaces;
- (d) An approximately 460-square-foot pier with an observation area for open-water viewing between Liberty Dock and South Forty Dock;
- (e) An approximately 979-square-foot public access pier extending from the park, measuring approximately 95 feet long by 8 feet wide with an observation area for open-water viewing at the end of the pier;
- (f) Three areas along the shoreline path with significant open-water views at the following locations:
- i. The north side of the foot of Liberty Dock;
  - ii. The south side of the foot of Issaquah Dock, between Issaquah Dock and the unnamed floating dock with four Gates houseboats; and
  - iii. Between “A” Dock and Issaquah Dock;
- (g) Approximately 23,217 square feet of irrigated landscaping along the shoreline paths outside of the park;
- (h) Public access and Bay Trail signage as determined appropriate by or on behalf of the Design Review Board; and
- (i) Path lighting as determined appropriate by or on behalf of the Design Review Board.

Such improvements shall be consistent with the plans approved pursuant to Condition II-A of this authorization (and generally conform to the plans entitled “Waldo Point Harbor BCDC Application Plan, 2001 Mitigated Plan, Overall Site Plan, sheet 7 of 21,” dated October 16, 2003, prepared by ILS Associates, Inc.).



Consistent with this plan, no portion of the “park” area shall be used for maintenance or creation of pickleweed habitat.

5. **Maintenance.** The areas and improvements within the total 83,602-square-foot area shall be permanently maintained by and at the expense of the permittee or its assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, drinking fountains, trash containers and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; and assuring that the public access signs remain in place and visible. Within 30 days after notification by staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site.
  6. **Assignment.** The permittee shall transfer maintenance responsibility to a public agency or another party acceptable to the Commission at such time as the property transfers to a new party in interest but only provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.
- F. **Reasonable Rules and Restrictions.** The permittee may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittee has both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
- G. **In-Lieu Public Access.** In addition to the public access required within the harbor, the permittee shall contribute money toward the purchase of property to expand shoreline access by increasing the size of Dunphy Park, in the City of Sausalito. By September 1, 2004, the permittee shall submit evidence to the Commission’s office that it has paid \$100,000 to the County of Marin as partial repayment of a loan by the County to the City of Sausalito for the purchase of property adjacent to Dunphy Park.
- H. **Visual Access to Open-Water Areas**
1. **Open Water Guarantee.** Prior to the commencement of any grading or construction activity, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise guarantee for the life of the project such rights for the public to the open-water areas and open-water view corridors shown in Exhibit “C,” as specified below. The instrument(s) shall dedicate to a public entity or otherwise restrict for the life of the project as open water for visual access purposes the open-water areas within the following four view corridors: (a) the area between South Forty Dock and Liberty Dock; (b) the area between Liberty Dock and Main Dock; (c) the area south of the foot of Issaquah Dock; and (d) the area between Issaquah Dock and A Dock. Such instrument(s) shall be in a form that meets recordation requirements of Marin County and shall include a legal description of the property being restricted and a map that clearly shows and labels the Mean High Tide Line, property lines, the property being restricted for open water, the legal description of the property and of the area(s) being restricted for open water, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access and open space areas. Approval or disapproval of the instrument(s) shall occur within 30 days after submittal for approval and shall be based on the following:

- (a) Sufficiency of the instrument to create legally enforceable rights and duties to provide the open water area required by this authorization;
  - (b) Inclusion of an exhibit or exhibits to the instrument that clearly shows the area(s) to be reserved with a legally sufficient description of the boundaries of such area(s); and
  - (c) Sufficiency of the instrument to create legal rights in favor of the public for visual access to open water that will run with the land and be binding on any subsequent purchasers, licensees, and users.
2. **Recordation of the Open Water Instrument.** Within 30 days after approval of the instrument, the permittee shall record the instrument on all parcels affected by the permit and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission.
  3. **Open Water Within Lands Confirmed or Exchanged as Public Trust Lands.** The State Lands Commission is expected to consider whether to authorize a land exchange agreement concerning Waldo Point Harbor and to authorize a lease in connection with that exchange. If the exchange is authorized, executed, and recorded, certain open water areas and adjoining uplands will be confirmed as Public Trust lands owned by the State of California. Prior to the commencement of any grading or construction activity, the exchange agreement and its deeds shall be executed and recorded, and a lease issued to the permittee or other party approved by the State Lands Commission. Prior to the execution of the lease, the Commission shall verify that the lease creates legally enforceable rights in favor of the public that open water areas will be used for visual access and for maintenance as open water for the duration of the lease.
  4. **Maintenance of Landscaping.** The permittee shall maintain for the life of the project areas on the shoreline that provide open-water views through the four view corridors described in Special Condition II-H(1) above. Maintenance shall consist of the regular trimming of shrubs and any plants that may block views to the Bay from the shoreline.

#### I. Mitigation

1. **Bay Fill Mitigation.** Prior to commencement of construction, as mitigation for new Bay fill, the permittee shall pay \$50,000 to the Richardson Bay Regional Agency (administered by the Marin County Community Development Agency), and submit to BCDC proof of such payment, for the general financing of removal of abandoned vessels or unusable debris from the Bay. Should the Richardson Bay Regional Agency Board refuse the permittee's offer of \$50,000, within 60 days of such refusal, the permittee shall either: (1) pay \$50,000 to the Commission's Central San Francisco Bay fill Removal Fund (10% of which can be used for administrative costs associated with disbursement of this portion of the fund); or (2) submit to the staff an alternative mitigation plan that provides a direct offset for Bay fill in an open-water area consistent with Special Condition II-I(3) below, and that alternative must be approved by or on behalf of the Commission.
2. **Pickleweed Mitigation.** In the case that the U.S. Army Corps of Engineers determines that mitigation is necessary for impacts of the project on existing pickleweed habitat, the permittee shall work jointly with Commission staff and with the U.S. Army Corps of Engineers to develop a mitigation program to enhance, restore, or create compensatory habitat. The mitigation shall not occur within the public access area required by this permit. If mitigation is not feasible on-site, it may occur off-site. Any proposal for mitigation within the Commission's jurisdiction shall be submitted for review and approval by or on behalf of the Commission. The permittee shall allocate up to \$50,000 toward such mitigation, which may include reasonable land acquisition costs.

3. **Total Cost of Bay Fill and Pickleweed Mitigation.** The total cost of the Bay fill mitigation and pickleweed mitigation shall not exceed \$100,000. In the event that the U.S. Army Corps of Engineers does not require pickleweed mitigation, the \$50,000 set aside for that mitigation shall be added to the \$50,000 paid to the RBRA or otherwise used pursuant to Special Condition II-I(1) above. In the event that the cost of the required pickleweed mitigation is significantly less than \$50,000, the difference shall be added to the \$50,000 paid to the RBRA or otherwise used pursuant to Special Condition II-I(1) above. In the event that the pickleweed mitigation is more than \$50,000, the permittee may request an amendment to this permit to revise this allocation. Such a request shall not substantially lessen the contribution required in Special Condition II-I(1).
  4. **Public Trust Opportunities Mitigation.** Prior to commencement of construction, as mitigation for lost public trust opportunities, the permittee shall transfer to the State of California two tideland parcels shown as parcels 240 and 236 in Exhibit "D."
- J. **Termination of Litigation.** Construction and grading shall not commence until: (1) all parties to the WPH v. State of California, Marin County Case No. 13791 enter into an amended settlement agreement consistent with the terms of this permit; and (2) the court has entered judgment pursuant to the amended settlement or the parties have dismissed all claims. If the litigation is not terminated by December 31, 2004, this permit will become null and void.
- K. **State Lands Commission Authorization.** Prior to the commencement of construction or grading activity, the permittee shall record or cause to be recorded the settlement required by Special Condition II-J, including a land exchange agreement approved by the State Lands Commission in substantial conformance with Exhibit "E" and the deeds required to implement the agreement. In the event that the land exchange is not executed and recorded by March 18, 2005, this permit will become null and void.
- L. **Appleton Ark**
1. **Removal of Unauthorized Portions.** Prior to commencement of construction of the Gates Dock, the permittee shall remove 1,035 square feet from the south side of the 4,849-square-foot Appleton Ark, reducing the ark to 3,814 square feet.
  2. **Garage Removal.** Prior to commencement of construction, the permittee shall submit for review and approval by or on behalf of the Commission a revised lease agreement with the Appleton Ark owner that provides that upon the death of the current owner, transfer of ark ownership, or expiration of this permit, whichever is sooner, the permittee will no longer lease the garage area on the north side of the Appleton Ark for private use. Within 90 days of the end of the lease for the garage area, the permittee shall remove the garage and its contents to a location outside of the Commission's jurisdiction and landscape the area pursuant to Special Condition II-A herein.
- M. **Dock A Harbor Maintenance Area**
1. **Extent of Harbor Maintenance Area.** During project construction, the harbor maintenance area berthed on Dock A shall be limited to a total of approximately 7,000 square feet, including the following items used for harbor maintenance operations: (a) one approximately 700-square-foot barge with a pile driver; (b) one approximately 3,500-square-foot barge for harbor maintenance-related work and equipment; and (c) an approximately 2,800-square-foot water area for floating equipment for the harbor maintenance operations. Prior to commencement of construction, any items on the barge and any floating debris that are not necessary for the harbor maintenance operations shall be removed from the Commission's jurisdiction.

2. **Reduction of the Harbor Maintenance Area.** After completion of construction and prior to use of the Gates Dock, the permittee shall reduce the size of the harbor maintenance area to an approximately 3,150-square-foot area, which may include: (a) a barge not to exceed 32 feet wide by 65 feet long; and (b) either a pile driver or a floating equipment area, or both in the case that the total square footage of the harbor maintenance area does not exceed 3,150 square feet.
  3. **Replacement with Houseboat.** Upon reduction of the harbor maintenance area consistent with Special Condition II-M(2), the permittee may apply to the Commission to create Ark Replacement Berth No. 4 on Dock A for berthing an approximately 900-square-foot houseboat. Ark Replacement Berth No. 4 shall not be located anywhere within the harbor other than Dock A. Ark Replacement Berth No. 4 shall not be constructed or filled until authorization is granted by or on behalf of the Commission.
- N. **Houseboat Lease.** Prior to use of the Gates Dock, the permittee shall give notice to and revise the lease agreement with the current lessee of Ark Replacement Berth No. 4 and provide the Commission with a copy of the revised lease agreement. The lease shall include the provisions of this condition and Condition II.M(3).
- O. **Houseboat Marina Conditions**
1. **Construction.** All construction activity shall be performed to minimize turbidity and to prevent debris from drifting and presenting a pollution or navigation hazard.
  2. **Waste Discharge.** The discharge of any solid or liquid wastes, including grey water, sewage, or oily wastes into the Bay within the marina basin is prohibited. Direct shore-side sewer connections for each residential structure shall be provided and maintained by the permittee at all times.
  3. **Enforcement Alternatives.** The Commission reserves the right, in the event of repeated or serious problems with waste discharges in violation of the requirements herein or in the event of laboratory test results that indicate the presence of materials associated with waste discharges, to require that onshore sewer lines be repaired or replaced for each berth or that the permittee remove or cause to be removed permanently from the marina any vessels from which wastes have been discharged.
  4. **Personal Floats.** All extensions of houseboats for private use, such as personal floats or docks, shall be limited to water-oriented uses. Such structures shall not be used as storage areas or work areas.
  5. **Houseboat Size.** The permittee shall ensure that no houseboat exceeds the envelope size specified in the County authorization to maintain setbacks between houseboats and fairways between docks. Houseboats, including personal floats and docks, shall not exceed two stories in height above the water line nor shall they extend into areas required to maintain County setbacks between houseboats. Houseboats, including personal floats and docks, shall not extend beyond the permittee's property lines or into open-water areas or view corridors consistent with Special Condition II-H.
- P. **Limit of Authorization**
1. **Twenty-Year Time Limit.** This permit for a houseboat marina consisting of 273 houseboats, 9 arks, one harbor maintenance area, and the associated marina facilities, such as docks, will lapse and become null and void on March 18, 2024. At least 150 days prior to expiration of this permit, the permittee shall submit to the Commission, a complete application for a new permit or shall remove the houseboat marina, including all residential structures and all associated facilities.

2. **Five-Year Renewal.** The Commission may extend this permit in five-year increments, but in no event may the term exceed the 20-year authorization limit, upon the finding that the extension is consistent with the public trust needs for the area and the Commission's law and policies.
  3. **Request for Renewal.** After expiration of the initial five-year period of this permit, the permittee may seek a five-year extension of the permit. In that case, the permittee shall provide the Commission with the data necessary to conduct a public trust needs assessment of the area and shall request the Commission, in writing, to extend the authorization for an additional 5 years, which is not to exceed the 20-year authorization limit. Failure to obtain extension authorization by or on behalf of the Commission shall result in the termination of this permit on March 18, 2024, the date of the original 20-year time limit.
  4. **State Lands Commission Lease Renewal.** If, upon expiration of the initial 20-year permit authorization on March 18, 2004, the permittee fails to renew its State Lands Commission lease, this permit will become null and void on March 18, 2024.
- Q. **Project Schedule.** Prior to commencement of construction, the permittee shall submit to the Commission for review and approval by or on behalf of the Commission, a project flow chart with specific project completion dates. The dates shall include, at a minimum, completion dates for the following: (1) debris removal; (2) construction of the Gates dock; (3) all other new dock construction; (4) reconstruction or remodel of the 38 Gates houseboats; and (5) installation of the public access improvements.
  - R. **Creosote Treated Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action in the Bay or any certain waterway, in any salt pond, or in any managed wetland within the Commission's jurisdiction as part of the project authorized herein.
  - S. **Notice to Contractor.** The permittee shall provide a copy of this permit to any contractor or person working in concert with the permittee to carry out the activities authorized herein and shall point out the special conditions contained herein.
  - T. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/he has reviewed and understands the requirements of the permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.
  - U. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.
  - V. **Commission Jurisdiction Over Fill Area.** Notice is hereby given that, under the McAteer-Petris Act, the area of the approved project that is within the Commission's jurisdiction under Section 66610(a) remains within that jurisdiction even after fill or substantial change in use, authorized by the Commission, may have changed the character of the area so that the permittee or the permittee's successors in interest will require further action by or on behalf of the Commission prior to any future change of use or work within areas filled pursuant to this authorization.
  - W. **Debris Removal.** Prior to completing the exchange of land with the State of California, the permittee shall remove all debris and other man-made materials from the property to be exchanged. In addition, prior to construction of the new, 24-berth dock, all debris and other man-made materials on lands retained by the permittee or associated with the harbor shall be removed to a location outside the jurisdiction of the Commission. Within 30 days of project completion, all construction debris shall be removed to a location outside the

jurisdiction of the Commission. In the event that any such material remains in any area within the Commission's jurisdiction, the permittee, its assigns, or successors in interest, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.

- X. **Recording.** The permittee shall record this permit or a notice specifically referring to this document on all parcels affected by this document with Marin County within 30 days after execution of the permit issued pursuant to this authorization and shall, within 30 days after recordation, provide evidence of recordation to the Commission.
- Y. **Site Access.** The permittee grants permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being/has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.
- Z. **In-Kind Repairs and Maintenance.** All repairs and maintenance to harbor facilities, such as docks, are limited to in-kind repairs and maintenance that do not involve any expansion in square-footage or change in use. Any in-kind repairs and maintenance of the boat dock and gangway shall only utilize construction material that is approved for use in San Francisco Bay. Construction shall only occur during current approved months to avoid potential impacts to fish and wildlife. BCDC staff should be contacted to confirm current restrictions.

### III. Findings and Declarations

This authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan*, the *Richardson Bay Special Area Plan*, the California Environmental Quality Act, and the Commission's amended coastal zone management program for San Francisco Bay for the following reasons:

- A. **Bay Fill.** Section 66605 of the McAteer-Petris Act states, in part, that: (a) fill in the Bay can be authorized only when public benefits of the fill exceed the public detriment from the loss of water areas; (b) the fill must be limited to water-oriented uses (such as water-related recreation), or minor fill for improving shoreline appearance or for public access; (c) fill can be authorized only when no alternative upland location exists for such purposes; (d) the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill; and (e) the nature, location and extent of any fill should be such that it will minimize harmful effects to the Bay Area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment, as defined in Section 21060.5 of the Public Resources Code...." Section 21060.5 of the Public Resources Code defines environment as "the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance."

In 1986, the Commission enacted *Bay Plan* policies that define and make more specific the applicability of Section 66605 to the re-authorization of existing houseboat marinas. A discussion of the specific criteria is examined further in the sections below on the *San Francisco Bay Plan* houseboat policies and the *Richardson Bay Special Area Plan*. In summary, the *Bay Plan* policies allow the continued authorization and minor expansion of an existing houseboat marina with certain restrictions that address the Public Trust needs and that limit the future expansion of the non-water oriented, residential use.

Waldo Point Harbor (WPH) is an approximately 245-berth houseboat marina located in an unincorporated area of Marin County, near the City of Sausalito on Gate 5 Road. WPH includes five organized docks, where houseboats are in designated berths, and one

dock where houseboats have settled in any available location over time (known collectively as the Gates Co-op). An eight-foot-wide public path extends along most of the shoreline, except in the area near the Gates Co-op.

On May 20, 1971, the Commission approved Permit No. 5-71, which authorized houseboats, docks and associated facilities at Waldo Point Harbor for a period of 20 years. Waldo Point Harbor never complied with all the terms of the permit and litigation ensued between WPH, the Gates Co-op, BCDC, the State Lands Commission (SLC), and the County of Marin (County). A settlement was eventually reached between all the parties in 1993. After the permit expired in 1992, the harbor has operated without a Commission permit pursuant to the terms of the settlement agreement. The permittee is seeking authorization of the portion of Waldo Point Harbor authorized in expired BCDC Permit No. 5-71 as well as authorization for additions to the harbor.

This permit authorizes old fill authorized under expired BCDC Permit No. 5-71 and new fill. The estimated n the northwest border of Waldo Point Harbor (WPH) are Yellow Ferry and Kappas amount of fill authorized in Permit No. 5-71 totals approximately 347,163 square feet (7.9 acres) and includes: (1) 25,280 square feet of pile-supported houseboat docks; (2) approximately 47,916 square feet (1.1 acres) of solid fill for public access; and (3) 245 residences (approximately 252,418 square feet for houseboats and 21,547 square feet for arks [6.2 acres total]). The proposed new fill totals 29,431 square feet and includes: (1) approximately 19,286 square feet of floating fill for 38 Gates houseboats; (2) 1,440 square feet of pile-supported fill for two public piers; (3) 825 square feet of pile-supported fill to extend Main Dock to accommodate four Gates houseboats; (4) 2,160 square feet of floating fill for the Gates Dock, which will accommodate 24 houseboats; (5) 3,660 square feet of floating fill for various docks ramps and floats, and (6) 3,150 square feet of fill for a harbor maintenance operation located on Dock A. The total amount of old and new fill will be approximately 372,829 square feet (8.6 acres).

1. **Public Benefits v. Public Detriment.** Section 66605 of the McAteer-Petris Act states, in part, that fill in the Bay can be authorized only when public benefits of the fill exceed the public detriment from the loss of water areas. BCDC Permit No. 5-71 authorized 245 houseboats and arks, five docks, fill for public access, and associated harbor facilities. Permit Application No. 5-71 provided the County and BCDC with the best opportunity they had to ensure the provision of sewage connections and other services to scores of existing houseboats and remedy a number of public safety problems, fire protection deficiencies, and building code violations. The Commission recognized additional public benefits associated with that project. As a result of the permit approval, the collection of houseboats, floating docks, and ramps were organized to cover less surface area of the Bay and greatly improve shoreline appearance. Sunken hulls and other debris were removed, which further improved shoreline appearance. Solid fill was approved for public access along the shoreline and public open space was required. Although organizing the houseboats on docks reduced the area occupied by the community and created open fairways, the harbor covered an estimated area of approximately 7.9 acres resulting in a significant loss of open-water area.

The public detriments of the previously authorized project were the lost opportunities to exercise Public Trust uses that may otherwise have existed for the 20-year duration of the permit. Some of those Public Trust uses include environmental preservation and preservation of open space, recreation, fishing and navigation. It appears that the Commission determined the resulting improvements in water quality, shoreline appearance and public access resulted in a greater public benefit than the detriments from the loss of water area and public trust opportunities. Moreover, the Commission was able to achieve the benefit of allowing people to retain their homes.

For this permit, Permit No. 5-71, the Commission is again placed in the difficult position of authorizing residential uses in the Bay by reviewing the previously authorized portions of WPH, plus the addition of an after-the-fact request for 38 new houseboats and associated facilities, a denial of which would result in displacing houseboat residents. The project includes the 38 Gates houseboats, associated houseboat facilities, and a harbor maintenance area that settled in the harbor without Commission authorization.

Like the situation at WPH prior to the 1971 authorization, the Gates area is currently unattractive, unsafe, and it occupies more area of the Bay than necessary. This permit provides the Commission with the best opportunity to ensure the provision of code-compliant sewage connections and remedy the public safety problems, fire protection deficiencies, and other building code violations. Gates occupies an unnecessarily large area of Bay because houseboats are moored in random fashion. Docks and gangways fan out in multiple directions. Debris and sunken hulls litter the Gates area. Finally, Gates is located in the area that was required in Permit No. 5-71 for public open-space, a public access path, and an open-water area. Some of the public benefits of the fill associated with the new Gates dock will be the resulting organization of Gates houseboats, the relocation of Gates outside of the open-space and open-water areas, and removal of sunken or abandoned hulls and debris. Furthermore, Gates is a low-income community that will qualify for public assistance as a result of Commission authorization. The public assistance will enable Gates residents to upgrade their houseboats to meet County building codes. This low-income feature of the project is required by the County permit.

In addition to the benefits of cleaning up the Gates area and providing low-income housing, the permittee states that it is offering the following specific public benefits: (1) the net gain to the State of California that would result from the land exchange with the State Lands Commission; (2) transfer to the state of two additional parcels that the permittee states are worth approximately \$136,917; (3) removal of approximately 58,000 square feet of debris from the Bay since the Commission's 1971 authorization; and (4) a \$100,000 contribution toward securing \$400,000 worth of land for an off-site shoreline park expansion at Dunphy Park, in Sausalito. The Commission recognizes these public benefits of the project and recognizes that the public benefits do not exceed the requirements of the Commission's laws and policies.

The permittee proposed a "public benefits package" rather than mitigation for specific adverse impacts. The Commission recognizes each public benefit and applies it as mitigation where it is required in order for the Commission to find that the project is consistent with its law and policies.

- (1) With regards to the land swap, the exchange of land between WPH and the State Lands Commission (SLC) is required in the settlement agreement to address Public Trust issues. First, it is critical that WPH obtain ownership of state-owned lands because private residences are occupying these state-owned tidelands in contravention of the Public Trust. The land swap will result in a large benefit to WPH because, without a land swap, WPH could not obtain approval for the existing marina or for an expansion. Second, pursuant to state law, the SLC may only approve a land swap if it results in a net benefit to the state. The Commission recognizes that the land exchange will provide a public benefit because the land exchange will consolidate land to form an open-water basin and will remove private uses from state-owned tidelands and, pursuant to any future approval by the SLC, will result in a net benefit to the state. The Commission determines that the land exchange cannot be applied as mitigation for other adverse impacts of the project.



Special Condition II-K ensures that this Commission permit would be revoked if the land exchange with the SLC is not completed within one year from the date of approval. Special Conditions II-A through II-E ensure that the land exchange would be in substantial conformance with the permittee's proposal and that public access would be provided on the upland portions of property that will be owned by the State, but leased and maintained by the permittee.

- (2) Regarding the permittee's second offer of two parcels valued at approximately \$136,917, the Commission finds in the Public Trust section below that the transfer of these additional parcels to the state is adequate mitigation for lost Public Trust opportunities as a result of the project.

Special Condition II-I(2) requires the two parcels to be transferred to the state prior to commencement of construction. This condition ensures that the other properties offered in the land exchange, excluding parcels 236 and 240, provide the net benefit to the state required for SLC approval. As a result of this additional transfer to the state, the Commission finds under the Public Trust section below, that the two parcels, valued by and permittee at approximately \$136,000, provide adequate mitigation for lost public trust opportunities. As such, the public benefit of the two parcels is actually an offset for one of the public detriments from the loss of water area.

- (3) The Commission finds that Permit No. 5-71 and the settlement agreement require WPH to remove debris from the harbor that was not authorized by the Commission. Since the debris was not authorized by the previous permit and has not been authorized since, it will not be allowed to remain in any case. Although the removal of unauthorized debris from the Bay is not sufficient mitigation for placing new Bay fill, as explained above, the appearance of the harbor has been and will continue to be vastly improved by removing the debris. Therefore, the debris removal is a public benefit of the project in the overall context of the project and its long history.
- (4) Regarding the permittee's offer to provide \$100,000 toward the expansion of Dunphy Park, the Commission finds that this is a substantial public benefit of the project. In addition to the off-site public access, the project includes 83,602 square feet of on-site public access with the following elements: (1) a 33,395-square-foot park with a paved shoreline path, a public pier, landscaping, and informal paths; (2) 22,810 square feet of 8 to 10-foot-wide, shoreline paths outside of the park; (3) 23,217 square feet of landscaping outside of the park; and (4) 4,180 square feet for a parking area with 10 public parking spaces. The Commission finds in the public access section below that the in-lieu public access in addition to the on-site public access is the maximum feasible public access consistent with the project as required by the Commission's law and policies. Although both the on-site and off-site public access are required to satisfy the requirement for maximum feasible public access consistent with the project, the public access will provide public accommodations that would not otherwise exist.

Special Condition II-G is included to ensure that the permittee provides the required funding for in-lieu public access at Dunphy Park by September 1, 2004. Further discussion of the proposal is included in the public access section.

In summary, the public detriments of the project are adequately mitigated by including special conditions in this authorization. For example, the lost opportunities to exercise Public Trust uses, such as operating small water craft like kayaks or restoring tidal flats, are required to be mitigated by donating two tideland parcels the state. The open-water views that would be lost are offset by the land exchange and the requirements of Special Condition II-H, which requires the permittee to reserve and guarantee specific view corridors.

The Commission finds that, as conditioned, the public benefits of the fill exceed the public detriment from the loss of water areas.

2. **Use.** The fill will be used for three purposes: (1) for private residential structures and associated facilities; (2) to improve public access; and (3) to improve shoreline appearance. Section 66605 of the McAteer-Petris Act provides: "(a) That further filling of San Francisco Bay...should be limited to water-oriented uses (such as ports, water-related industry...water-oriented recreation, and public assembly...) or for minor fill for improving shoreline appearance or public access to the bay...." In general, the Commission will not authorize Bay fill for new, private residential uses because residences are not primarily water-oriented. Permit No. 5-71 authorized the harbor as minor fill to improve shoreline appearance and public access. Since that permit was issued, the Commission amended its regulations regarding minor fill to improve shoreline appearance and public access and enacted *Bay Plan* houseboat policies that recognize that in some circumstances, fill for residential uses may be necessary. Therefore, the Commission's findings for this proposal, which involves reauthorization of the existing marina and authorization of a minor expansion to the marina, rely on Section 66605 of the McAteer-Petris Act, Regulation Sections 10700 and 10701, and the *Bay Plan* houseboat policies.

Before the Commission's 1971 authorization, WPH was littered with pre-existing dilapidated houseboats, debris was scattered on the shoreline and in the Bay, and the houseboats were in random locations resulting in coverage of an unnecessarily large area of water. If constructed as approved by the Commission, the project would have improved shoreline appearance and public access. Much of the project debris was removed, disintegrating houseboats were removed, houseboats were connected to upland sewage treatment facilities, pile-supported docks were constructed allowing for fairways and view corridors from the shoreline, and portions of the public access were installed. Consequently, the facilities were authorized as fill to improve shoreline appearance and public access. The Commission finds that the houseboat marina approved through Permit No. 5-71 is hereby re-authorized, in part, on this same basis.

The situation with the Gates Cooperative community houseboats today is similar. The Gates area is littered with dilapidated houseboats and debris. The fill for the project would result in a more organized configuration of Gates houseboats as well as remodels of individual Gates houseboats that would improve their appearance, reduce the footprint of the majority of Gates houseboats, and reduce the overall coverage of water area. As with the authorization under Permit No. 5-71, the fill for the Gates houseboats and associated facilities can be authorized as a minor addition to the existing houseboat marina that will improve shoreline appearance and public access and that will be consistent with *Bay Plan* policies.

The Regulation Section 10700 provides, in part, that "[t]he Commission may approve the placement of minor fill to improve shoreline appearance...only if, in addition to the other findings required by Cal. Government Code Section 66605 and the *San Francisco Bay Plan*, the Commission finds and declares that: (a) the fill is necessary because: (1) the present appearance of the Bay and shoreline in the area adversely affects enjoyment of the Bay and its shoreline within the site area itself or within adjacent areas of the Bay or shoreline, and (2) it is either physically impracticable or economically infeasible to improve the appearance without filling; (b) the amount of filling approved is the minimum necessary to improve shoreline appearance; (c) the proposed project would improve the shoreline appearance; and (d) the fill will not adversely affect enjoyment of the Bay and its shoreline within the fill area itself or within adjacent areas of the Bay and shoreline and the fill will not have any adverse effect on present or possible future use of the area for any designated priority water-related use or for public access...."

The Regulation Section 10701 provides, in part, that “[t]he Commission may approve the placement of minor fill to improve public access...only if, in addition to the other findings required by Cal. Government Code Section 66605 and the *San Francisco Bay Plan*, the Commission finds and declares that: (a) the fill is necessary because: (1) there is at present inadequate public access to the Bay shoreline in the area, and (2) it is either physically impracticable or economically infeasible to improve public access without filling; (b) the fill will improve public access to the Bay; and (c) the amount of filling is the minimum necessary to provide improved public access to the Bay.”

Addressing each of these processes the Commission finds:

(a) The fill is necessary for the following reasons:

- The present appearance of the Bay and shoreline in the area adversely affects enjoyment of the Bay and its shoreline within the site itself and impedes public access to the Bay. Many of the houseboats are in a state of disrepair. They are tied to a number of floating docks in a random and chaotic fashion, occupying an unnecessarily large area of the Bay. The electric lines radiate in multiple directions from a power pole mounted on the shoreline. The shoreline area is littered with debris. Portions of the shoreline are covered with gravel and used to park cars. A dilapidated grounded houseboat sits near the shoreline surrounded by additional debris. An area around the grounded houseboat is cordoned off with debris, creating a semi-private yard. Finally, the shoreline path ends at the Gates area so that the public must walk through the gravel parking area and debris-covered shoreline to reach the remainder of the shoreline path. The location of the entry point to the existing Gates dock coupled with these conditions, effectively privatizes the area and discourages public use of the shoreline; and
- It is physically impracticable and economically infeasible to improve the appearance of the shoreline and public access without the fill because the hulls on which the houseboats sit are not suitable to be relocated upland. Furthermore, the Gates houseboats provide homes for approximately 76 low-income people that would otherwise lose their homes without a permit for the fill. Approval of this permit will allow the owners of the houseboats to obtain grants to bring their houseboats up to building standards and relocate them to more appropriate locations. In contrast, without relocating Gates to the new dock, the current conditions on the shoreline continue as they have for the past 20 years. Waldo Point Harbor’s attempts to force the removal of these structures were rejected by the court.

(b) The project is designed to ensure that the Gates houseboats are organized in the harbor, that individual houseboats satisfy County buildings codes, and that the amount of fill is the minimum necessary to improve shoreline appearance and public access. The majority of the new fill is for the Gates houseboats and the floating dock that will accommodate them. The dock was planned as a floating dock rather than a pile-supported dock to reduce the amount of fill that is necessary to moor the Gates houseboats. As a condition of the County’s authorization for the project, individual Gates houseboats must be remodeled or completely reconstructed to comply with County codes. There are three different houseboat designs from which Gates can choose, each design includes a second story so that the footprint of each houseboat is minimized. Overall, the project is designed with the minimum fill necessary to accommodate Gates houseboats and will reduce the amount of fill existing at the site.

The project currently occupies about 8.5 acres of water area. The new fill totals 26,000 square feet, which is a minor addition to the harbor. The new fill will replace existing, unauthorized fill with a smaller amount of fill for a total net reduction in

fill. Upon project completion, the project will occupy approximately 7.5 acres of water area.

Further, as discussed in the “Houseboat Policy” section below, the project also satisfies the *San Francisco Bay Plan* policies that allow only minor additions to an existing houseboat marina. The number of Gates structures have dropped from 72 to 38, thus further minimizing the amount of new fill.

- (c) The new fill for the project will improve the appearance of this part of the shoreline and will create public access opportunities making it possible to eliminate private use of this area and construct a public park. The appearance of the shoreline is described in (a) above. The fill will facilitate organization of the Gates houseboats, removal of debris, removal of the grounded houseboat from the shoreline, relocation of parking, and installation of a landscaped, public park with a continuous shoreline path; and
- (d) Based on findings (a) through (c) above, the Commission concludes that the fill will not adversely affect enjoyment of the Bay and its shoreline within the fill area itself or within adjacent areas of the Bay and shoreline and the fill will not have any adverse effect on present or possible future use of the area for any designated priority water-related use or for public access. In fact, the fill will improve shoreline appearance and will result in public access improvements.

Special Conditions II-A through II-E ensure that the shoreline improvements and public access will be installed in conformance with the application and that the public access will be guaranteed for the life of the project. Special Conditions II-H and II-K ensure that the open water areas and view corridors that become available as a result of relocating and organizing Gates are guaranteed for the life of the project. Finally, Special Condition II-W ensures that debris will be removed from within the Commission’s jurisdiction.

The Commission finds that the project is consistent with the *San Francisco Bay Plan* policies on houseboat marinas, as discussed below, and that the fill is a minor addition to improve shoreline appearance and public access consistent with Section 66605(a) of the McAtteer-Petris Act and Regulation Sections 10700 and 10701.

3. **Alternative Upland Location.** The majority of both the old and new fill will allow for the continued use of the harbor for residences and related facilities, which are not generally required to be located on the Bay. In evaluating the alternative upland location for this fill, the Commission recognizes the history of the project. It has taken many years and many compromises to develop a plan that accommodates the Gates Co-op, satisfies the majority of the WPH community, complies with County ordinances, fulfills the settlement agreement, and complies with the Commission’s laws and policies. After several versions of the plan were reviewed by and objected to by the WPH community, they took it upon themselves to develop a plan that will satisfy them as well as the majority of other interested parties. With Commission support, the BCDC staff actively participated in the CEQA process, submitting comments for every CEQA document. From the project’s conception, the BCDC staff pointed out the difficulties of authorizing fill for private residences, the importance of planning for the minimum fill necessary, the need to minimize environmental impacts from the fill, the issues with locating a new houseboat dock in an open-water area adjacent to an anticipated public park, and other conflicts with laws and policies. Some of the staff’s comments and suggestions were implemented and some were not.

Recognizing the history of this marina and *San Francisco Bay Plan* houseboat policies, the Commission has considered the feasibility of relocating the houseboats upland. The permittee states that the hulls of houseboats are not constructed to sit on dry land and will fail. The residences may not satisfy building codes for upland structures. Without

the houseboat marina, 280 residences will have to be vacated and many more residents will be required to find new housing. The new fill for Gates houseboats and related facilities is specifically for low-income housing and those residents might have a particularly difficult time finding affordable upland housing in the Bay Area. Further, Waldo Point Harbor's attempts to remove the Gates structures were rejected by the court.

The Commission finds that, given the context of this project, there is no alternative upland location for the fill. The Commission has addressed the question of authorizing houseboat marinas in the *San Francisco Bay Plan* houseboat policies. See below for a discussion of this issue.

4. **Minimum Necessary Fill.** The proposal includes 347,163 square feet (7.9 acres) of old fill authorized under expired BCDP Permit No. 5-71 and 26,281 square feet of new fill. It is apparent from photographs of the harbor taken prior to the Commission's 1971 authorization that the random location of houseboats and debris occupied a larger portion of the Bay than the resulting 5 docks and 245 berths. The County approval of the project ensures that the footprint for each houseboat will not extend beyond County setbacks and that fairways are maintained between docks so that houseboats can be reached in an emergency. The docks, which are used by both houseboat residents and members of the public, are generally 8 to 10 feet wide, which is the width commonly used for public paths. The new portion of the fill will involve reorganizing the Gates Co-op in a similar fashion to comply with County codes. As a result, the fill will occupy approximately 1 acre less water area than the current 8.5 acres covered by the existing marina and the Gates community. Therefore, the Commission finds that the project results in the minimum fill necessary.
5. **Minimizing Impacts.** The Environmental Impact Report evaluated the environmental impacts of the current proposal and several alternatives, including two "no project" alternatives: one that involved removal of all houseboats from the marina and leaving the docks in place; and another that involved no changes to the marina. The EIR established the Community Development Plan (the plan authorized in this permit) as the environmentally superior plan. The EIR recognizes that the no project alternatives of leaving the marina "as is" would be the environmentally superior project, but would not comply with state and County laws, nor would it achieve the goals of the settlement agreement. The EIR concludes that the "no project" alternative involving removal of all houseboats would result in greater environmental impacts due to resulting disturbance of the contaminated sediments in the harbor and displacement of all the houseboat residents. Both no project alternatives would be inconsistent with the County's requirements that the project provides low-income housing and that such housing complies with County building codes.
  - (a) **Sediment Contamination.** Other than displacement of houseboat residents, the contaminated sediments in the harbor present the greatest constraints on project design. Sediment samples and bivalves were taken from the project area to determine contamination levels. The sediments in the outlying areas of the harbor contained contaminant levels similar to those in the greater Richardson Bay. Generally, the contamination testing indicated the presence of concentrations of chlordanes, DDTs, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), copper, mercury, lead, zinc, and total organic carbon. The contaminant levels increased closer to the shoreline. In the Gates Co-op area, sediments were found to contain PAHs and PCBs at levels comparable to three of the most contaminated industrial sites in the estuary: Castro Cove (historic outfall of Chevron Oil's refinery in Richmond), Islais Creek (site of the San Francisco Southeast combined sewer overflow), and Mormon Channel (located in the middle of the Port of Stockton).

The project is designed to minimize disturbance of these contaminated sediments, which will have a greater impact than any impacts to benthic communities resulting from shading and the weight of houseboats on the mud. This latter impact was determined to be insignificant. All work in tidal areas will take place during the lowest tides to minimize turbidity. Additionally, silt screens will be used to prevent any disturbed contaminated sediments from reaching tidal waters. It should also be noted that the contaminant levels and the nature of the contaminants will not necessarily prohibit clean up of those Bay muds. According to the permittee, clean up of the contaminants will, however, be cost prohibitive at this time.

- (b) **Visual Impacts.** The EIR concludes that the project will improve current views to the Bay by cleaning up and organizing the Gates area. The BCDC staff submitted comments indicating that the location of the proposed Gates dock in an open-water area will impede views to the Bay from the public park and shoreline paths and stating that an alternative with fewer visual impacts would be to first find space on existing docks for the 38 Gates houseboats, even if one or more of the docks would need to be extended. Then, if a new dock was still needed, WPH could build a smaller dock that would have fewer visual impacts. This suggestion was not favored by the County. The permittee has, however, proposed new public viewing areas and a public pier at the park to provide views to the Bay. In addition, at the request of the Commission's Design Review Board, select houseboats were relocated to enhance and maintain view corridors throughout the harbor. Special Condition II-H ensures that view corridors will be maintained and guaranteed for the life of the project.
- (c) **Volume, Surface Area or Circulation of Water and Water Quality.** The greatest potential impacts to water quality other than disturbing contaminated sediments is the impact from sewage and non-point source runoff. Regarding sewage disposal, all houseboats will be or already are connected to upland sewage treatment facilities. The sewage connections at the Gates Co-op will be updated and will run along the new dock. Non-point source pollution could result from additional paving for parking lots. The project is designed with landscaping between parking lots and the shoreline so that runoff is captured in the landscaping and held behind the existing and proposed quay walls.

The EIR addresses the issue of loss of water volume, surface area and circulation in the context of the existing conditions at the harbor and the organization and cleanup that will result from the current proposal. Generally, the impact associated with loss of surface area of the Bay is shading of water areas below the fill. Impacts related to loss of water volume, in this case, will result primarily from houseboats sitting on the bottom of the Bay. According to the EIR, the existing harbor facilities that create shade in the Bay include the houseboats, floats ramp, and piers (horizontal elements), and the mooring piles (vertical elements). The existing harbor project has approximately 7.6 acres of fill for houseboats, floats, and ramps, and 0.9 acres of piers for a total of approximately 8.5 acres of existing horizontally-oriented structures creating shade (including unauthorized fill). The proposed addition to the harbor includes approximately 26,000 square feet of fill that will create shading, but will result in more organized dock configuration. Given the existing conditions at the site, including the unauthorized fill, the project will result in a reduction of approximately 1.2 acres of horizontal shading elements, but a net increase of approximately 0.01 acres of vertically oriented structures. Overall, the project will reduce the amount of habitat currently diminished by contact and shading at WPH.

The EIR states that "[w]hile the proposal will result in the movement of some of the Gates Cooperative houseboats to the new WPH docks, the net amount of bottom contact will decrease as well as the net amount of shading. The impact to forage

areas, compaction of sediments, and creation of permanently shaded areas, will not be considered significant because of the likelihood that the project will result in an overall decrease in the amount of bottom contact and shading. The overall impact of the project to the benthic community will likely be positive, as more previously inhabitable substrates will become available as a result of the decrease in bottom contact." The EIR concludes that "project implementation will result in the shading of new, previously unshaded areas, and in the uncovering of previously shaded areas. Overall, the amount of shading and bottom contact will decrease with project implementation, resulting in increased habitable benthic area. This would be considered a less-than-significant impact."

While the EIR contains valuable information, it only evaluates the impacts associated with proposed piers and docks and the resulting improvements to the existing conditions. This is consistent with CEQA requirements. Because Gates was never authorized by the Commission, the impacts of locating Gates on the site should be evaluated as well as any improvements associated with relocating the Gates houseboats and facilities as they currently exist. As new fill, Gates will result in coverage of an additional 26,281 square feet of the Bay. Like most of the other 232 houseboats in the marina, most of the Gates houseboats will not float at all stages of the tide. Dredging would be particularly harmful in the area of the proposed Gates Dock where sediment contaminant levels are unusually high. The houseboats will sit on the tidal flats or, on occasions when they float, they will shade subtidal habitat resulting in impacts to 26,281 square feet of tidal flats. The permittee will provide up to \$100,000 to the Richardson Bay Regional Agency (RBRA) or the Commission's Central San Francisco Bay Fill Removal Fund for removal of fill from the Richardson Bay or greater Central Bay. Special Condition II-I ensures that the mitigation occurs and provides details to carry out the mitigation. As conditioned, the impact of the additional fill, a 7% increase to the overall fill in the WPH, would have an insignificant impact.

The Commission finds that, as conditioned, the fill will minimize harmful effects to the Bay Area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment, as defined in CEQA.

6. **Mitigation.** The permittee would contribute up to \$100,000 to the Richardson Bay Regional Agency (RBRA) or the Commission's Central San Francisco Bay Fill Removal Fund. The details of the mitigation, the Commission's mitigation policies, and the associated issues are described below in the mitigation section.
7. **Harbor Maintenance Area.** The harbor maintenance area occupies a total of approximately 7,000 square feet of water area and would remain in use for the duration of project construction. The harbor maintenance area includes: (a) a working boat shop on an approximately 3,500-square-foot floating barge; (b) an approximately 700-square-foot pile-driver for contract work within the marina; and (c) an approximately 2,800-square-foot floating storage area. There is no residential use of the barge and the uses are floating industrial uses, some of which are water-oriented. Equipment storage will be for harbor maintenance-related equipment for which there is no upland location and will be limited to equipment that must float, such as a pile driver or floats for repairs under docks.

Though the harbor maintenance area was not specifically authorized in Permit No. 5-71, it has been shown on WPH project plans since 1971. The authorization section clearly does not include a harbor maintenance area on Dock A, nor is there any mention of such a facility in the findings and declarations. In addition, construction plans for Dock "A" that were approved consistent with Permit No. 5-71 do not show a harbor maintenance area. Instead, the plans show three to four houseboat berths in

the current location of the harbor maintenance area. The current proposed plan shows a boxed area defining the harbor maintenance area that appears much larger than the area currently covered by these facilities. However, the permittee maintains that the area will be necessary for project construction. The plans show a barge that is approximately 3,500 square feet and a “floating equipment area” of the same size for a total of 7,000 square feet. There is considerable debris stored on the barge. The floating equipment area contains a pile driver that appears to be about half the size of the area delineated on the plans. Harbor maintenance areas are common in marinas throughout the Bay. Many marina owners’ preferred location for a harbor maintenance area is within the marina because it reduces the cost of maintenance work. However, with the exception of the occasional pile driver or dredge, these facilities are located in upland areas rather than on the Bay. The permittee states that “the floating equipment area may, from time to time, include the storage of barges, piles, and other floating equipment needed for harbor maintenance.” The space outlined on the plans could potentially be occupied by four Gates houseboats.

Special Conditions II-M and II-N ensure that the harbor maintenance area is reduced in size to a total 3,150-square-foot area for harbor maintenance-related equipment only, which can be considered a water-oriented use. The conditions further provide that, as a result of reducing the harbor maintenance area, one ark replacement berth may be added to Dock A subject to authorization by or on behalf of the Commission. The ark replacement berth would have otherwise been located in an important view corridor.

8. **Appleton Ark.** Portions of the Appleton Ark, a structure currently occupying a 4,849-square-foot footprint over the Bay, were added without Commission authorization. Aerial photos showing several additions to the Appleton Ark from 1968 (100’ x 35’) to 1999 (120’ x 57’).

The permittee proposes to reduce the Appleton Ark in width by removing approximately 1,035 square feet from the east side of the structure. It appears that one of the unauthorized additions to the ark is a garage enclosure that opens onto the public access path. The permittee proposes to remove the garage at a later date.

Special Condition II-O ensures that the first portion of the ark proposed for removal is removed before commencement of construction and that the garage is removed when the current lease is terminated. Such action will add to the open water areas of the harbor and improve the public use and enjoyment and the required public access areas.

9. **Arks.** Existing at the harbor are nine “grounded houseboats” or “arks.” These former houseboats are permanently sitting in the mud or are elevated above the tide on pilings. As with the harbor’s houseboats, the permittee owns the underlying property and the owners of the houseboats and arks are tenants of the marina. The presence of the arks raises two points.

First, BCDC Permit No. 5-71 authorized the renovation of a harbor that contained 13 arks. Since that permit was issued, three of the arks have burned down or have been torn down. Also, the settlement agreement provides that any ark located on land to be conveyed to the state should be offered a “replacement” houseboat berth so that the ark may be removed from the shoreline. One of the arks (the C. Russell Smith) qualifies under the settlement agreement. The other three arks have been absent from the harbor for many years. Nevertheless, the permittee states that according to legal agreements with those ark owners, the permittee must provide “replacement” berths. Therefore, the permit includes 38 new berths for Gates houseboats and four new berths for the replacement of the arks, for a total addition of 42 new houseboats in the harbor, an increase of about 17%. The permittee has provided some written agreements that show that the permittee had some arrangement with at least three owners of the removed arks to replace their ark “berth” with a houseboat berth. The total number of new houseboats must meet the Bay Plan policy that states: “As to marina expansions, the



houseboats will be limited in number and will be only a minor addition to the existing number of authorized houseboat berths. The addition of a limited number of new berths for existing Gates houseboats and replacement berths for the owners of destroyed arks is consistent with this policy.

Second, evidence exists that the arks predate the Commission's jurisdiction. Nevertheless, the owner-permittee of the property on which the arks sit has included them in this current proposal for reauthorization of existing residences and expansion of the harbor. The Commission has received comments from the public asserting that the Commission does not have jurisdiction over the pre-existing arks if they are in the same location and have not physically changed. Including the arks and lands underneath them as part of the overall project is within the prerogative of the property owner which, through its leases, can control the residences on its property. It is, therefore, appropriate for the Commission to consider the arks and their location as part of this permit.

Given all of the information above on Bay fill, the Commission finds that the fill is consistent with Section 66605 of the McAteer-Petris Act.

- B. **Public Access.** Section 66602 of the McAteer-Petris Act states, in part, that: "...existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." The San Francisco Bay Plan policies on public access further state that "...maximum feasible public access should be provided in and through every new development in the Bay or on the shoreline...the access should be permanently guaranteed...should be consistent with the physical environment...provide for the public's safety and convenience...and built to encourage diverse Bay related activities and movement to and along the shoreline...." In evaluating a project's proposed public access, the Commission relies on the San Francisco Bay Plan policies to determine whether the project includes maximum feasible public access consistent with the project.

1. **Maximum Feasible Public Access.** In assessing whether a proposed project will provide the maximum feasible public access consistent with the project, the Commission is guided, in part, by the decisions contained in *Nollan et. al. v. California Coastal Commission* and *Dolan et. al. v. City of Tigard*. In these decisions, the U.S. Supreme Court held that a public agency must show a nexus, or essential connection, between a permit condition requiring the dedication of property or a fee and the public burden created by a private development project. The agency must also demonstrate that the condition is roughly proportional to the burden.

Without a plan for public access, the physical location of private residences and associated facilities will prevent public access to the Bay. The project involves a total of 281 homes in the Bay, 6 large docks, 3 small docks, a floating harbor maintenance area, an office building, and a parking lot with hundreds of parking spaces. These facilities cover an approximately 7.6-acre area of the Bay and most of the shoreline within WPH. The project will bring hundreds of people to the shoreline who, without public access improvements, would have no accommodations. Because houseboats are large structures located on the water, they occupy Bay surface area blocking views of open water and, in some cases, their height and proximity to the shoreline block views to the Bay itself. Without provisions for viewing the Bay, shoreline users would hardly know the Bay is there.

Without the public access, the reauthorization portion of the project involves 245 residential structures in the Bay, 5 docks, and several hundred parking spaces. Assuming two residents for each residential structure, the project will result in an additional 490 people living on the Bay. The nature of shoreline usage is different for a housing project than it is for an office building. The people residing on the shoreline or in the Bay are typically there for longer periods of time. They are at their homes during their free time

and may be more likely to use the shoreline for recreational purposes. In the case of this project, the shoreline will be used for walking, parking, bicycling or other uses. The permittee also points out that the houseboat marinas are tourist attractions and on some weekends attract buses filled with tourists. WPH also employs a harbor master, an office manager, and a maintenance crew. Without public access on site, the large number of people that use the shoreline at the harbor as a result of this project will create a significant burden on public access in the neighboring areas.

Those portions of the project that are proposed as new work include 38 houseboats, one large floating dock, two small docks, a floating harbor maintenance operation, a harbor master's office building with additional space for harbor maintenance materials storage, and a debris removal and construction activity. The new portions of the project will result in approximately 76 additional people living on the Bay and using the shoreline as well as an addition of any employees of the floating harbor maintenance area.

The total 281 homes in the Bay, the floating harbor maintenance area, the office building, and the parking lots block some views to the Bay from Bridgeway Boulevard, which is the nearest public thoroughway and supports a bike lane. Drivers and bicyclists will have no way of knowing they are close to the Bay without a plan designed with view corridors. For those that do know the proximity of the Bay, the viewing opportunities from the shoreline would also be compromised without a project designed to protect open-water views. The large number of structures and current project configuration create a significant burden on public views.

2. **Public Access Required in BCDC Permit No. 5-71.** The public access required in BCDC Permit No. 5-71 included fill for an 8-foot-wide path within a landscaped corridor along the entire shoreline of WPH, landscaped public open space where grounded houseboats were removed, and significant visual access to an open-water area. The Gates now uses the open-space area, the open-water area, and a portion of the shoreline path area.

Because the permit conditions stipulated that public access plans be submitted and reviewed by the Design Review Board after the permit was issued and, because the permit files are over 30 years old, it is difficult to determine exactly what the original public access open-space proposal included. There are no public access plans in the files that were approved by or on behalf of the Commission. Permit No. 5-71 required that "[T]he fill approved herein [1.1 acres of fill along the shoreline] shall be used only for pedestrian and bicycle pathways, landscaping, open space or play area; the new fill shall not be used for automobile parking, except that minor portions of individual parking spaces may extend on to the new fill when this is necessary for an efficient layout of parking areas on existing land." The permit further required that "all structures shown in the application for a BCDC permit as a 'grounded houseboat' shall either have received [authorization]...from the County of Marin for use as a dwelling or for water-oriented commercial recreation, or shall have been removed and replaced by landscaping or other open public use compatible with the vicinity." The grounded houseboats included the Charles Van Damme, the Isaaqua, and the C. Russell Smith. (The C. Russell Smith received authorization for use as a dwelling and is now included in the proposal as an "ark replacement berth".) The permittee points out that open space would have been available only if grounded houseboats did not receive County authorization for use as residences.

It is clear from the text of the permit that the Commission's intent was to enhance public use of the shoreline in the significant area occupied by grounded houseboats where such boats did not receive County approval. It is also clear from the line delineating the location of the 1.1 acres of fill that the majority of the open space would be

located on the shoreline between Issaquah Dock and the Appleton Ark. The open-space location was the only attractive area for a large public space in the harbor. It was adjacent to a large open-water basin offering significant views of the Bay.

The public access authorized in Permit No. 5-71 was never completed. An 8-foot-wide shoreline path with landscaping was installed along most of the shoreline, except in the area south of Issaquah Dock and west of Main Dock. Public open space was never completed because the Gates Co-op houseboats settled in the proposed open-space area. Much of the fill for the public path and open space was never installed and the open-water basin was littered with dilapidated boats, catwalks, and debris.

3. **New On-site Public Access.** The public access includes a public park in the same general location as the former open-space area, a partial connection to the portion of shoreline path that was installed pursuant to Permit No. 5-71, and 10 public parking spaces. Specifically, this public access includes 83,602 square feet of public access park, paths, landscaping, and amenities throughout the harbor with the following details: (1) a 33,395-square-foot park with a paved shoreline path, a public pier, landscaping, and informal paths; (2) 22,810 square feet of 8 to 10-foot-wide, shoreline paths outside of the park, most of which were installed pursuant to Permit No. 5-71; (3) 23,217 square feet of landscaping outside of the park, most of which was installed pursuant to Permit No. 5-71; and (4) 4,180 square feet for a parking area with 10 public parking spaces.
4. **In-lieu Public Access.** As noted above, the BCDC staff, with Commission support, submitted comments on the project at every opportunity, objecting to the location of the Gates dock in an open water area adjacent to the public park required in BCDC Permit No. 5-71, but never completed. The staff suggested creating space for additional houseboats on existing docks and then, if necessary, building a smaller dock for the remainder of the Gates houseboats. This suggestion was unacceptable to the WPH community. Therefore, when the staff first began discussing the new permit application with the permittee's representative, the staff was very clear about what it believed the Commission would require to satisfy maximum feasible public access consistent with the entire project. The staff raised two issues with the permittee's representatives:
  - The public access determined to be the maximum feasible public access consistent with the original project authorized through BCDC Permit No. 5-71 was never completed. The public access plan associated with the expired permit was evaluated in connection with the original project, which included fewer houseboats and docks than the current proposal and did not include an intensification of use of the Harbor Master's office building. The staff requested a larger and better-designed park that will be commensurate with the expansion of WPH; and
  - The value of that entire park area has diminished due to the proximity of the proposed Gates Dock and the lack of open water views that were anticipated in Permit No. 5-71. The staff asked for in-lieu public access to address the diminished value of the entire park area.

In order to address the staff's suggestion for in-lieu public access, WPH agreed to contribute \$100,000 toward the purchase of additional land for a public park adjacent to nearby Dunphy Park. The permittee states that this \$100,000 is not in-lieu public access to compensate for any lack of adequate on-site public access. However, the monetary contribution is included under the public access section of its October 16, 2003 application submittal and, as noted above, in-lieu public access is necessary to offset the impacts from the Gates dock and houseboats for this proposal to be the maximum feasible public access consistent with the project.

5. **Review by the Design Review Board.** The Design Review Board (DRB) reviewed a park design that did not include a pickleweed mitigation area. The public access authorized herein does not include a pickleweed protection or mitigation area. However, shortly before the permit application was filed as complete, the permittee proposed such an area within the public access. During three separate meetings, the Design Review Board reviewed the public access with a shoreline path in the area the permittee is now proposing as pickleweed. The permittee revised the public access proposal after the Board's third review, replacing a portion of the shoreline path within the proposed park with a pickleweed mitigation area. The Board did not have an opportunity to review this change in the public access design. The permittee has since retracted this proposal. Special Condition II-I(2) ensures that a pickleweed protection and mitigation area will not be located within the public access and provides the permittee with options for pickleweed mitigation should it be required at a later date.

The first DRB meeting was August 11, 2003, where the Board determined that a site visit was necessary to review the public access proposal. The second review took place at the Bay Model on September 24, 2003, after a tour of the project site. The Board determined that there were certain view corridors that were particularly important and should not have boats located where views will be blocked. They also indicated that the park area should have a design that provides visual and physical access into the park from the corner of Bridgeway Boulevard and Gate Six Road. The permittee responded by proposing a revised park design, by relocating some of the houseboats that would block important view corridors, and by proposing a dock extension at one of the important view corridors. The Board reviewed the revised proposal a third time at the Sausalito School District on October 27, 2003. The Board concluded that the revised proposal will sufficiently protect important view corridors and that the park design was sufficient to move forward with the project and go before the Commission.

The Board requested a fourth review of the proposal after any Commission authorization and made the following recommendations: (1) The public access should begin at the intersection of Bridgeway and Gate Six Road and a range of "tools" and details should be used to enhance the entrance to the shoreline. Recommendations included creating a raised crossing in the parking lot near the intersection, creating paving that feels public, and widening the path that leads to the shoreline from the intersection; (2) The access to the park from the intersection must be very clear, and the parking lot should not "water down" a strong axis to the shoreline; (3) Some parking might need to be reconfigured to create an acceptable park design; (4) A design development package should be submitted for the Board's review after Commission approval, but prior to final plan review and construction; and (5) There should be regulatory controls on the harbor with regard to size of boats and slips.

Without Special Condition II-I and the permittee's agreement to the condition, the proposal with a mitigation area would have been significantly different than the proposal the DRB reviewed. The addition of the mitigation area had negative impacts on the park design. The Board recommended a strong connection to the shoreline path from other public areas such as Bridgeway. The proposal reviewed by the DRB connected the shoreline path throughout the harbor and connected to Bridgeway in two locations. The design with a pickleweed area would have interrupted the shoreline path creating an abrupt ending and rendering useless once of the connections to Bridgeway. Consequently, the remaining continuous path would have been located inland near the parking, thereby limiting the usefulness and desirability of the shoreline path that the Board believed to be an important element in the park design. Furthermore, the size of the park would have been significantly reduced from 33,395 square feet to 28,040 square feet. The reduction in size would have left very little space to reconfigure parking to create a park design that is ultimately acceptable to the Board. One of the parking lot configurations considered by the Board located parking between the Appleton Ark and

the park because the Board believed that the size and bulk of the Appleton Ark will impose on the park without a buffer. The public access plan authorized herein includes trees and other plantings as a buffer, which were removed under the plan with the pickleweed mitigation area. Finally, Permit No. 5-71 required a continuous path along the shoreline of the entire harbor. The pickleweed mitigation area would have interrupted the shoreline path diverting the public to an inland path. The Commission's "Public Access Design Guidelines" are very specific about the need for public access areas to be designed to be usable by the public. The mitigation location in the public access would have been inconsistent with this guideline. In summary, these negative impacts would have been inconsistent with the Board's recommendations.

Special Conditions II-A through II-F ensure that the public access will be constructed in substantial conformance with the public access plans reviewed by the DRB. Special Conditions II-E through II-H ensure that the public access and view corridors are maintained and guaranteed for the life of the project, and that the permittee provides the in-lieu public access required to make this public access the maximum feasible public access consistent with the project. Special Condition II-I ensures that pickleweed mitigation shall not occur within the public access and provides options for other pickleweed mitigation plans should the Army Corps of Engineers require mitigation.

The Commission finds that, as conditioned, the on-site and off-site public access is consistent with Section 66632 of the McAteer-Petris Act because it provides the maximum feasible public access consistent with the project.

- C. **Houseboat Policies.** The Bay Plan policies on houseboats require, in part, that "the Commission should authorize houseboats used for residential purposes in existing houseboat marinas only when each of the following conditions are met: (a) The project will be consistent with a special area plan adopted by the Commission for the geographic vicinity of the project; (b) ...the houseboats will be limited in number and will be only a minor addition to existing number of authorized houseboats; (c) All wastewater producing facilities will be connected directly to a shoreside sewage treatment facility; (d) No additional fill will be required except for the houseboat itself, a pedestrian pier on pilings, and for minor fill for improving shoreline appearance or for producing new public access to the Bay; (e) The houseboats will float at all stages of the tide...unless it is determined that requiring flotation at all tidal stages will have a greater adverse environmental effect on the Bay, and will not result in increased sedimentation in the area; (f) The houseboats will not block views of the Bay significantly from the shoreline; (g) The project will comply with local government plans and enforceable regulations...; and (h) The project will be limited in cost and duration so that the tidelands and submerged lands could be released for water-oriented uses and Public Trust needs and, in no case, will the initial or any subsequent period of authorization exceed 20 years...."

The *Richardson Bay Special Area Plan* (RBSAP), which was prepared in cooperation with local government agencies in the Richardson Bay area, contains policies for "Residential Vessels and Floating Structures." Policy No. 2 contains requirements for expansions to existing houseboat marinas that are similar to the *Bay Plan* houseboat policies. Further discussion of the policies in the RBSAP is included below. It is helpful in applying the Commission's houseboat policies to note that Policy No. 2 contains a footnote that indicates that the Gates Cooperative project will be an expansion of an existing houseboat marina. It appears that, in adopting the RBSAP, the Commission intended to evaluate Gates as an expansion of an existing houseboat marina, to which the Commission's houseboat policies would apply.

Houseboat policy (a) applies in situations where local governments have developed special area plans that have been adopted by the Commission and contain houseboat policies. In this case, the Richardson Bay Special Area Plan (RBSAP) was developed in cooperation

with several local agencies and incorporated into the Commission's *Bay Plan*. The RBSAP generally refers to the Commission's houseboat policies. However, a more detailed discussion of the RBSAP policies is included in the section below.

Regarding houseboat policies (b) and (c), 241 houseboats and arks currently exist in the harbor. The permittee seeks authorization for 38 additional Gates houseboats and 3 ark replacement berths for arks no longer existing, which will be a 17% increase in the number of residential structures. Given the number of berths initially approved for the harbor and the Commission's previous indication that a limited number of berths could be allocated to accommodate Gates houseboats, this increase satisfies houseboat policy (b). All residential structures in the harbor, including Gates houseboats, are connected directly to an upland sewage treatment facility. The sewage connection for the 38 Gates Co-op docks will be replaced on the new dock.

Policy (d) describes allowable fill within existing houseboat marinas. Most of the additional fill for the harbor will be used primarily for public access, the houseboats themselves, and ancillary marina facilities, such as piers or docks for mooring the houseboats. In addition, two public, pedestrian piers will be constructed to enhance Bay views otherwise diminished by the presence of new houseboats. Additionally, much of the new fill will improve shoreline appearance. As described in detail in the Bay fill section on "use" above, before the Commission's 1971 authorization, WPH was littered with dilapidated houseboats, debris was scattered on the shoreline and in the Bay, and the houseboats were in random location resulting in coverage of an unnecessarily large area of water. The facilities were then authorized as fill to improve shoreline appearance and public access. Some debris was removed, disintegrating houseboats were removed, pile-supported docks were constructed allowing for fairways and view corridors from the shoreline, and portions of the public access were installed. The situation with the Gates Cooperative community houseboats today is similar. Many of the boats are in a state of disrepair. They are tied to a floating dock in a random and chaotic fashion, occupying an unnecessarily large area of the Bay. The new fill for the project will improve the appearance of this part of the shoreline and will improve public opportunities in the public park area. As a result of Permit No. 5-71, most of the shoreline is now landscaped. The new proposal includes a fully landscaped park on new and existing fill as well, which will be a vast improvement to the gravel, parked cars, and debris that currently exist.

Houseboat policy (e) requires the houseboats to float at all stages of the tide unless it is determined that requiring flotation at all tidal stages will have a greater adverse environmental effect on the Bay, and will not result in increased sedimentation in the area. Most houseboats at WPH do not float at all stages of the tide. However, the project EIR demonstrates that the dredging required to achieve flotation at all tidal stages would have greater adverse environmental effects on the Bay than the effects resulting from houseboats sitting on the Bay bottom. The EIR indicates that, other than displacement of houseboat residents, the contaminated sediments in the harbor presents the greatest constraints on project design. Sediment samples and bivalves were taken from the project area to determine contamination levels. The sediments in the outlying areas of the harbor contained contaminant levels similar to those in the greater Richardson Bay. Generally, the contamination testing indicated the presence of concentrations of chlordanes, DDTs, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), copper, mercury, lead, zinc, and total organic carbon. The contaminant levels increased closer to the shoreline. In the Gates Co-op area, sediments were found to contain PAHs and PCBs at levels comparable to three of the most contaminated industrial sites in the estuary: Castro Cove (historic outfall of Chevron Oil's refinery in Richmond), Islais Creek (site of the San Francisco Southeast combined sewer overflow), and Mormon Channel (located in the middle of the Port of Stockton).

The project is designed to minimize disturbance of these contaminated sediments, which was determined would have a greater impact than any impacts to benthic communities resulting from shading and the weight of houseboats on the mud. All work in tidal areas will take place during the lowest tides to minimize turbidity. Additionally, silt screens will be used to prevent any disturbed contaminated sediments from reaching tidal waters. It should also be noted that the contaminant levels and the nature of the contaminants will not necessarily prohibit clean up of those Bay muds. Clean up of the contaminants would appear, however, to be cost prohibitive at this time.

Houseboat policy (f) requires that houseboats would not block views of the Bay significantly from the shoreline. The EIR concludes that the project will improve current views to the Bay by cleaning up and organizing the Gates Co-op area. Recognizing that Gates was not authorized prior to this authorization, an alternative with fewer visual impacts would be to first find space on existing or extended docks for the 38 Gates houseboats. Then, if a new dock was still needed, WPH could build a smaller dock that would have fewer visual impacts. A plan involving relocation of Gates boats to existing docks was unacceptable to the WPH community. After many years of negotiations between the WPH community and the property owner, the project evolved to include the new Gates dock, but the impacts of the dock will be mitigated by the incorporation of new public viewing areas and a public pier at the park to provide views to the Bay.

Pursuant to CEQA, the Marin County Board of Supervisors, certified the Final Environmental Impact Report and adopted a resolution to approve the project on February 25, 2003 (Houseboat policy (g)).

To comply with Houseboat policy (h), the houseboats should only be authorized for a period of 20 years. The permittee is applying for a 20-year permit. If approved, the Commission should conduct a study of Public Trust needs of the project area within five years of project authorization and every five years thereafter. If the Commission determines that the area is needed for water-oriented uses and Public Trust needs, the houseboat use could be terminated after the 20-year period. Special Condition II-P ensures that the authorization will expire if, at a future date, the Commission determines that Public Trust needs are not being met in the area. It further ensures that the permit will never authorize the project for more than 20 years at a time.

The Commission finds that the marina and the expansion satisfy the *Bay Plan* policies for reauthorizations of and minor additions to existing houseboat marinas.

- D. **Richardson Bay Special Area Plan.** The *Richardson Bay Special Area Plan* (RBSAP) was prepared by the Commission in cooperation with the County of Marin, the Town of Tiburon, and the Cities of Belvedere, Mill Valley and Sausalito. The RBSAP was adopted as a part of the *San Francisco Bay Plan* in April 1984. The RBSAP policies on floating homes state, in part, that: "(a) vessels and floating structures used for residential purposes...should be allowed only in recreational or houseboat marina berths when consistent with and in compliance with local codes. All anchor-outs should be removed from Richardson Bay; (b) within the existing houseboat marinas, limited numbers of new berths should be authorized to accommodate some of the anchor-out houseboats which existed in Richardson Bay on or prior to September 30, 1983, provided the anchor-out houseboat is in compliance with the applicable policies; and policies of the Special Area Plan. No new houseboat marinas should be authorized; and (c) any vessel or floating structure used primarily for a nonwater-oriented use such as an office, commercial, or industrial use should not be permitted in Richardson Bay."
1. **RBSAP Residential Vessels and Floating Structures Policies.** Regarding the first policy, the permittee seeks authorization of a houseboat marina in an area designated in the RBSAP maps for houseboat use. The County of Marin granted local approval for the project finding it is in compliance and that the property is undesirable and not feasible for Public Trust uses. Public Trust uses and needs are discussed in detail below.

The second policy allows a limited number of new berths within existing houseboat marinas in order to accommodate anchor-out houseboats that existed in Richardson Bay on or prior to September 30, 1983. Although Permit No. 5-71 expired more than 10 years ago and the Commission's houseboat policies only allow temporary authorizations, WPH currently exists as a 231-berth houseboat marina. The proposal will increase the harbor by 38 houseboats berths and 3 ark-replacement berths or approximately 17%. The settlement agreement establishes that the 38 houseboats existed in Richardson Bay prior to September 30, 1983, and the County approval establishes that the project is consistent with local codes.

The third policy only applies to recreational boat marinas and the fourth policy above prohibits nonwater-oriented uses other than residential uses in Richardson Bay. The project includes a harbor maintenance area located on Dock A that includes a working boat shop on a 3,500-square-foot, floating barge, a pile-driver for contract work within the marina, and a storage area. There is no residential use of the barge. The area is used as a workspace for maintenance of marina-related facilities, which is a water-oriented use. However, storage of non-maintenance-related equipment on the barge or floating adjacent to the barge is not a water-oriented use. As detailed in the section of Bay fill above, Special Conditions II-M and II-N limit the size and use of the area and ensure that the harbor maintenance area will eventually be replaced by a smaller maintenance barge and an ark replacement berth.

2. **Public Access, Views, and Vistas.** The RBSAP also contains policies for public access, views, and vistas. These policies are substantially the same as the public access policies in the *Bay Plan* with a few important differences discussed below.

Policy No. 9 states that all local, regional, and state agencies should work together to provide new public access and parks, especially to link the existing shoreline parks and public access areas to the extent feasible without additional filling in the Bay or adversely affecting natural resources. In light of the fact that the value of visual and physical access at the park was compromised by the addition of a houseboat dock, new residences and loss of open-water views, and the lack of upland area available for additional public access on-site, the staff worked with City of Sausalito officials to discuss purchase of the some privately owned properties adjacent to Dunphy Park. The result of such a purchase will be an expansion of the shoreline park and an increase in visual and physical access to the Bay. A \$100,000 contribution from the permittee to make the purchase feasible will provide valuable in-lieu public access.

Policy No. 11. states that the public should have clear visual link between public thoroughfares and shoreline public access areas so that the public nature of shoreline access areas is clear. The nearest public thoroughfare, the intersection of Bridgeway and Gate 6 Road, was a focus of the Design Review Board's comments on the public access proposal. The Board concluded that the proposal (reviewed without the pickleweed mitigation area) will sufficiently protect important view corridors and that the park design was sufficient to move forward with the project and go before the Commission. However, the Board requested a fourth review of the proposal after any Commission authorization and recommended an even stronger connection between Bridgeway and Gate 6 Road. The Board requested to review public access details to enhance this connection after any Commission authorization. Special Condition II-D ensures that the permittee will return to the DRB for final project review.

The Commission finds that, as conditioned, the project is consistent with the Richardson Bay Special Area Plan policies on floating residential structures and public access.

- E. **Mitigation.** The project will result in placement of 26,281 square feet of new Bay fill. Adverse impacts due to fill for residences include the reduction in Bay volume and surface area, loss of subtidal and mudflat habitat, and shading. These impacts require mitigation. The applicable Bay Plan policies on mitigation can be summarized as follows:



(1) “[p]rojects should be designed to avoid adverse environmental impacts to Bay natural resources such as to water surface area, volume, or circulation and to plants, fish other aquatic organisms and wildlife habitat, subtidal area, or tidal marshes or tidal flats....[Unavoidable] adverse impacts...should be minimized to the greatest extent practicable...measures to compensate for unavoidable adverse impacts to the natural resources of the Bay should be required. Mitigation is not a substitute for meeting the other requirements of the McAteer-Petris Act;” (2) “Individual compensatory mitigation projects should be sited and designed within a Bay-wide ecological context, as close to the impact site as practicable...;” (3) “When determining the appropriate location and design of compensatory mitigation, the Commission should also consider potential effects on benefits provided to humans from Bay natural resources, including economic (e.g. flood protection, erosion control) and social (e.g. aesthetic benefits, recreational opportunities);” (4) “The amount and type of compensatory mitigation should be determined for each mitigation project based on a clearly identified rationale that includes an analysis of...the probability of success...the expected time delay...the type and quality of the proposed mitigation site...;” (5) “Mitigation programs should be coordinated with all affected local, state, and federal agencies having jurisdiction...;” and (6) “the Commission may allow fee-based mitigation when other compensatory mitigation measures are infeasible.”

Mitigation Policy No. 7 provides guidelines for Commission review of mitigation proposals. First, the mitigation should be reviewed as part of the project. The mitigation program should describe the proposed design, construction and management of mitigation areas and include: (a) clear mitigation goals; (b) clear and measurable performance standards; (c) a monitoring plan; (d) a contingency plan; and (e) provisions for the long-term maintenance, management and protection of the mitigation site.

WPH proposes a public benefits package, a portion of which is clearly proposed as mitigation for Bay fill. The remainder of the public benefits package was not proposed to address any specific adverse impacts associated with the project.

1. **Pickleweed Mitigation Area.** As discussed above under the public access section, the permittee submitted for the first time a pickleweed mitigation plan on December 15, 2003. The permittee later retracted that plan from the project. That plan would have occupied approximately 3,897 square feet of what had been proposed as usable park area, including a pathway connecting to the existing shoreline path.

The permittee originally relied on a 1995 Army Corps jurisdictional determination to estimate the square footage of pickleweed on the site. Since that time, the pickleweed area has grown in size to cover approximately 2,652 square feet. The pickleweed is located in small patches throughout the site, with one larger patch located in an upland area west of the Appleton Ark. A grounded houseboat sits within this larger patch of pickleweed and the remaining area within the pickleweed is littered with debris. Because there no formal path exists, numerous informal paths traverse the pickleweed. Most of the other pickleweed patches are very small and scattered in upland areas around the site. In general, the pickleweed likely has little habitat value.

Although the 1995 jurisdictional determination from the Army Corps of Engineers was completed, a Corps permit application has not yet been submitted. Therefore, the permittee and the Commission do not know what the Army Corps would require or accept as mitigation. While the mitigation policies state a preference for avoiding on-site impacts and implementing mitigation as close to the adverse impact as possible, the pickleweed mitigation proposal may not have accomplished either goal. Therefore, Special Conditions II-I(2) and (3) provide a method of analyzing all of these factors at an offsite location, within the scope of this authorization and outside of the time constraints for acting on this filed application.

2. **Bay Fill Mitigation.** The project involves approximately 26,281 square feet of new fill from the Gates houseboats and associated facilities in addition to the estimated 347,163 square feet of old fill authorized under BCDC Permit No. 5-71. At the time of the 1971 authorization, the Commission did not have mitigation policies in place and thus, did not require mitigation for the fill.

As noted above, the permittee states it is offering the following specific public benefits:

- (a) Based on the permittee's appraisal, a \$539,000 benefit to the state that would result from the land swap;
- (b) Based on the permittee's appraisal, two additional, off-site parcels in the land swap worth approximately \$136,917 (proposed specifically as mitigation for new Bay fill); and
- (c) The removal of 58,000 square feet of debris from the Bay, most of which was unauthorized fill, at a cost of \$1 million.

These mitigation offers are not consistent with the Commissions mitigation policies. All three proposals raise a similar issue. The proposals are either based on the permittee's appraisal of the land exchange or based on undocumented removal of debris. As discussed in the section on Bay fill above, the Commission determined the following:

- (a) With regards to the land exchange, this is required in the settlement agreement to remove private, non-trust uses from publicly-owned tidelands. It cannot also be counted as mitigation for Bay fill. Furthermore, the land exchange would not provide direct mitigation for new fill by removing fill from the Bay.
- (b) Regarding the permittee's second offer to transfer to the State of California two parcels it claims are valued at approximately \$136,917, the Commission determined above that this would not result in direct mitigation for new Bay fill by removing Bay fill. Therefore, it would not be adequate mitigation for Bay fill. However, donating these two parcels to the state is appropriate mitigation for lost Public Trust opportunities resulting from the project because the state manages its state-owned tidelands to protect Public Trust uses.
- (c) Regarding WPH's proposal to include debris removal as mitigation. The settlement agreement requires WPH to remove debris from the harbor that was not authorized by the Commission. Since the debris was not authorized by the previous permit and has not been authorized since, it would not be allowed to remain in any case.

In the past, the Commission has generally accepted mitigation for open-water fill that results in removal from fill in another, preferably nearby, location. As mitigation for new Bay fill, the permittee will provide up to \$100,000 to either the RBRA or the Commission's Central Bay Fill Removal Fund for removal of fill from the Richardson Bay or the greater Central Bay. The Central Bay Fill Removal Fund is administered by the California Coastal Conservancy for the sole purpose of removing fill from the Central Bay. Likewise, the RBRA was created, in part, to remove fill from the Richardson Bay. Specifically, the RBRA removes derelict or abandoned houseboats. The RBRA estimates that the cost of removing an approximately 30-foot-long vessel that still floats is roughly \$800-\$1,000 and an additional \$800-\$1,000 for disposing of the vessel. Removing a similar-sized vessel from the bottom of the Bay is roughly \$1,500-\$2,500 per vessel with an additional \$800-\$1,000 for disposal. Assuming the average total cost of removing a vessel is \$2,500, then mitigation for 38 additional houseboats would approximate \$95,000 with an additional \$5,000 mitigation for associated houseboat facilities in the Bay. Thus, the permittees proposal to provide up to \$100,000 for removal of Bay fill is adequate.

In the event that the Army Corps of Engineers requires pickleweed mitigation, \$50,000 of the total \$100,000 could be used for an off-site pickleweed mitigation area. Because the existing pickleweed is located upland on the site, a pickleweed mitigation subject to tidal action would expand Bay habitat. Coupled with the \$50,000 for direct removal of Bay fill, creation of a mitigation area would provide adequate mitigation for new fill.

The Commission finds that the mitigation proposal is adequate to mitigate for the impact of approximately 26,281 square feet of new Bay fill and is consistent with the mitigation policies.

- F. **Public Trust.** The following discussion herein will facilitate a Commission determination on whether the project is consistent with Public Trust needs for the area and specifically with *Bay Plan* houseboat policy (h). This policy states that: “[t]he Commission should authorize houseboats used for residential purposes in existing houseboat marinas only when each of the following conditions is met:...(h) The project will be limited in cost and duration so that the tidelands and submerged lands could be released for water-oriented uses and Public Trust needs and, in no case, will the initial or any subsequent period of authorization exceed 20 years. The Commission should conduct a study of Public Trust needs of the project area within five years of project authorization or reauthorization and every five years thereafter. If the Commission determines within the first five years of authorization that the area is needed for water-oriented uses and Public Trust needs, the project should be terminated at the end of the 20-year authorization period. If after the first five-year period of project authorization the Commission determines that the area is needed for water-oriented uses and Public Trust needs, the project should be terminated no less than 15 years from the date of Commission determination. In any event, the original 20 years of the permit’s authorization period cannot be extended or renewed by the Commission unless an application is filed for such purpose....”

The *Richardson Bay Special Area Plan* contains Public Trust findings under the section on Residential Vessels and Floating Structures based on advice from the Office of the Attorney General. The findings provide helpful guidelines for determining whether a project is consistent with the Public Trust. Finding No. 6(b) states:

On privately patented tidelands, houseboats and live-aboards used for long-term residential purposes could be permitted, consistent with Public Trust principles, only if the use will not be inconsistent with Public Trust needs. In assessing whether houseboat or live-aboard use will be inconsistent with trust needs in a given instance, the following issues should be considered: (1) whether the use will interfere with existing Public Trust uses, such as public access to the Bay, navigation, commerce, fishing, scenic view corridors and wildlife habitat; (2) whether the lands are currently needed for Public Trust uses; (3) whether the use will interfere with future Public Trust uses in the area; [and] (4) whether the subject area is relatively small in relation to the time for which the lands will be devoted to non-trust uses....

1. **Public Trust Needs Assessment.** At the staff’s request, the permittee submitted an analysis of Public Trust needs of the area including data from the City of Sausalito and Richardson Bay area. The data examines Public Trust uses such as public access to the Bay, public views of the Bay, recreation, navigation, commerce, fishing, and open space and wildlife habitat preservation. A finding that Public Trust needs are satisfied now will likely hold true for the next few years. New development requires planning, local permits, state and federal permits. This usually takes a number of years. Therefore, it is unlikely that WPH’s impact on Public Trust needs will change in the next few years. By the fifth year, Houseboat Policy (h) requires preparation of a new Public Trust needs assessment.

- (a) **Whether the Use Will Interfere with Existing Public Trust Uses.** The constraints of most of the project site make some Public Trust uses at the site infeasible. The harbor is very shallow making much of it off-limits for sailboats and larger recreational boats. Additionally, as established in the section above on minimizing impacts of Bay fill, sediments located in the inner areas of the harbor contain contaminant levels similar to some of the most contaminated sites in the greater San Francisco Bay. Thus, it is currently infeasible to dredge the harbor. The contaminated sediments also make the harbor less than suitable for swimming or any kind of recreation that will result in sediment disturbance. The tests performed on bivalves in the harbor indicate that promoting fishing within the harbor will present a public health risk. The files for BCDC Permit No. 5-71 indicate that soil contamination was an issue in 1971 as well. The nature of the contaminants indicate that the majority of the contamination occurred when the site was used as a ship-building facility in the 1940s and 1950s.

If the harbor were not used as a houseboat marina, it could possibly be used as wildlife habitat and open-water viewing. Given the level of contamination in the harbor, it appears unwise to manage it for wildlife habitat. Regarding open-water views, the project as it exists does block some open-water views and the proposed addition will further block open-water views. However, the project includes alternatives for viewing limited areas of open water by organizing the docks with fairways creating small open-water areas sheltered by the houseboat community. The project will facilitate open-water viewing by including a shoreline path, a public shoreline park, two public piers, and a strong connection from Bridgeway that will draw the public to the shoreline. Also, the project will provide an off-site opportunity to view a larger open-water area by contributing to the expansion at Dunphy Park.

Richardson Bay supports one commercial fishery: the herring fishery. Herring eggs adhere to underwater surfaces such as eel grass, piles, and docks. The EIR concludes that the only suitable areas for herring spawning in the harbor are the man-made structures, but the existing site is not suitable for use by the herring fishing industry because of its shallow depth and numerous structures.

Based on this assessment, the Commission finds that the project does not interfere with existing Public Trust uses.

- (b) **Whether the Lands Are Currently Needed for Public Trust Uses.** Evaluating the need for each Public Trust use in Sausalito and Richardson Bay is a very complex and difficult task. The regional and planning efforts to do this type of evaluation over the years have included thousands of hours of public hearings where the Public Trust needs and uses have been anticipated. It has been assumed for this analysis that the current local and state agency public policy and regulations now in place are designed to preserve, protect and provide for the needs of the public. The objective of this analysis is to look at the project-specific impacts to Public Trust needs in the context of the larger Richardson Bay and Sausalito areas.
- (1) **Recreation, Public Access, Views.** The results of a simple survey of the existing recreational boat marinas is attached as Appendix A. The survey indicates that within the study area there are 1,665 slips available for 15 to 80-foot-long boats at 10 recreational boat marinas. Three of the marinas have available slips. One marina provides a public boat launch for a fee of \$15. None of the marinas have slips available for day use, either free or fee based (referred to in the attachment as public berth rentals). Two of the marinas have large boats available for public rentals. Additionally, there are three additional boat rental providers in the area. From this data, it could be concluded that there is no additional need for recreational boating slips and launches. As established above, WPH could

not currently satisfy any need for recreational boating. Recreational boating and use of small personal watercraft such as kayaks and canoes is not recommended in WPH. The harbor is too shallow and sediments are too

contaminated to dredge. For the same reasons, the harbor will be an unlikely place to locate a recreational boating marina. It should be noted that the nature of the contamination will not preclude clean-up efforts, but clean-up is cost prohibitive at this time. If, at some future date, soil contamination clean-up becomes feasible, the project site could be suitable for recreational boating, a recreational boat marina, or other Public Trust uses.

There are currently over 9 shoreline parks in the Sausalito/Richardson Bay areas (see Appendix A). Many of these parks have unimpeded Bay views, shoreline pathways, public personal water craft launches. According to phone interviews with the Sausalito Parks and Recreation Department and Marin County Open Space District staffs, these parks are not crowded or heavily used. One exception is Dunphy Park, which is a Sausalito city park. Based on the interviews, the park uses generally include walking and viewing, with very limited recreational fishing activity.

- (2) **Environmental Protection.** There are two wildlife sanctuary areas in Richardson Bay and many acres of high value, functioning tidal marsh. Nearly all of the east and north sides of the Bay is preserved tidal marsh. In addition, the Richardson Bay Wildlife Sanctuary, located between Strawberry Point and Tiburon, has been impacted by the use of personal watercraft and is now closed to such use from October to March. This indicates a need to balance trust uses within Richardson Bay. If additional refuges within Richardson Bay were needed, once again it appears that the WPH site would not be an appropriate location for such a use at this time. The project EIR studied the benthic, aquatic and terrestrial biological values of the WPH property (see above section on minimizing impacts of Bay fill). The EIR concludes that the benthic conditions have been heavily degraded due to many years of human use. As noted, the EIR found that the only substrate that will support spawning is the man-made structures at the harbor. Scientists concluded that the existing aquatic conditions are also degraded by many years of human use. The issue of soil contamination is discussed above.
- (3) **Commerce and Navigation.** Historically, the deep water shoreline of the City of Sausalito was used for ship building. The ship building efforts included the construction of a dry dock in the middle of Richardson Bay that has been removed in the past 10 years. Over the years sedimentation has reduced the navigability of the Richardson Bay channel. The WPH property to the north of Sausalito is a tidal mud flat area. Even navigation of small shallow draft boats and personal watercraft in these areas is difficult. Port use and water-related industrial uses or cargo transport use in this location are not desirable and/or feasible even with significant dredging. The *San Francisco Bay Plan* and Seaport Plan designations and needs assessments have not identified commerce and navigation, port, or water-related industrial uses for Richardson Bay.

The Commission finds that the WPH lands are not currently needed for Public Trust Uses.

- (c) **Whether the Use Will Interfere with Future Public Trust Uses in the Area.** Houseboat Policy (h) addresses this issue by requiring a Public Trust needs assessment every five years, which could result in termination of the authorization if the Commission determines that the project is interfering with Public Trust needs. This assessment assumes that changes in Public Trust needs will take place slowly. A finding that Public Trust needs are satisfied now will likely hold true for the next few years.

New development or a new wildlife refuge large enough to create a significant change to WPH's impact on Public Trust needs would require planning, local permits, state and federal permits. This usually takes a number of years. Therefore, it is unlikely that WPH's impact on Public Trust needs would change in the next few years. By the fifth year, a new Public Trust needs assessment will be prepared.

- (d) **Whether the Subject Area Is Relatively Small in Relation to the Time for which the Lands Will Be Devoted to No-Trust Uses.** The vicinity map included as Exhibit 1 shows the project size in relation to the entire Richardson Bay. Richardson Bay is many hundreds of acres and the project site is only 44 acres, including areas in the land swap. As noted, Richardson Bay has 10 recreational boating marinas, 3 boat rental facilities, 9 shoreline parks, acres of tidal marsh, and two wildlife sanctuaries. WPH is one marina within the Richardson Bay and is applying for a 20-year permit, the authorization of which could be discontinued if the Commission determines at a future date that there is a public need for the site in order to exercise Public Trust uses.

- **Public Trust Opportunities.** There is an important distinction between Public Trust needs and Public Trust opportunities. Based on the information above, there is not a need for Public Trust uses at WPH at this time. The public's ability to exercise Public Trust uses may be currently satisfied at other sites in the Richardson Bay area. However, if the water and shoreline of WPH were not occupied with private, residential structures and associated facilities, the public would have the opportunity, whether there was a need or not, to use and view open water. The site would probably develop into tidal marsh or could provide undisturbed tidal flats. Without residential structures, the open-water areas on the site would be available, although not ideal, for public recreation.

The physical presence of private residences on approximately 7.6 acres of the Bay and marina facilities occupying most of the WPH shoreline results in lost opportunities that require an offset. Special Condition II-I ensures that the permittee will complete the transfer of two tideland parcels to the state as mitigation for lost Public Trust opportunities. In order to minimize paperwork associated with the transfer, the State of California may accept the parcels as a part of the land exchange. Because tidelands under state ownership are managed to protect Public Trust uses, this is adequate mitigation for lost Public Trust opportunities that would otherwise result from the project.

The Commission finds that the project for the next 20 years, with the opportunity to reassess trust uses and needs in five years, is consistent with the Public Trust needs in the Richardson Bay area.